Supreme Court U. S.
FILED,
JAN 8 1892
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

No. 14,766.

VICTOR MEYER AND ADOLPH MEYER,
PLAINTIFFS IN ERROR,

versus

WALTER T. RICHARDS.

In Error to the Circuit Court of the United States for the Eastern District of Louisiana.

BRIEF FOR PLAINTIFFS IN ERROR.

E. H. FARRAR,
B. F. JONAS,
E. B. KRUTTSCHNITT,
Counsel for Plaintiffs in Error.

L. GRAHAM & SON, 99, 101, 103 GRAVIER ST., N. O.

SUPREME COURT OF THE UNITED STATES.

No. 14,766.

VICTOR MEYER AND ADOLPH MEYER,
PLAINTIFFS IN ERROR,

versus

WALTER T. RICHARDS.

In Error to the Circuit Court of the United States for the Eastern District of Louisiana.

BRIEF FOR PLAINTIFFS IN ERROR.

This is a suit brought to recover the price paid by plaintiffs to the defendant for certain bonds, sold and bought as Louisiana State bonds, and which it is charged were not what they were represented to be, but, on the contrary, were without value, and not valid bonds of the State of Louisiana.

Plaintiffs allege that the defendant sold and delivered to them certain described bonds, as good, valid and legal bonds of the State of Louisiana, purporting to be Louisiana State Consols, for which plaintiffs paid him the market

price for valid bonds, and held them for several months, without any knowledge or suspicion that the bonds were not such as they were represented to be.

That long after said sale and delivery to them, to-wit., about the month of September, 1889, they discovered, and it was officially announced by the proper officers of the State, that the above described so-called bonds were not good, legal and valid bonds of the State of Louisiana, and that the said bonds had never been legally issued by the State.

That six of the said described bonds, numbered respectively 740, 793, 846, 856, 900 and 904, are a portion of the Consolidated bonds formerly held by the State treasurer for the use of the Agricultural and Mechanical College fund, and six of said above described bonds, numbered respectively 1971, 1993, 2010, 2020, 2057 and 2026, are a portion of the Consolidated bonds formerly held by the State treasurer for the use of the Seminary fund; and which said described twelve bonds, as forming a portion of said funds, were declared by the 233d article of the Constitution of the State of Louisiana to be null and void after the first day of January, 1880, and which said article also prohibited the General Assembly from ever making any provision for their payment; and plaintiffs further alleged that on said first day of January, 1880, the date of said nullity, and afterwards, the said bonds were in the State treasury.

Petition, pp. 1 and 2, Record.

When plaintiffs discovered that the so-called bonds were invalid and worthless, they made demand upon the defendant to exchange them for good bonds, or to refund them the purchase price, and on his refusal to comply, instituted this suit.

Defendant admits the sale of the bonds for the consideration stated; "that he represented the same to be good and legal obligations and bonds of the State of Louisiana,"

and believed then and still believes them to be such, and admits "that the plaintiffs received said bonds, believing the same valid, and paid therefor the full market value thereof in open market of the day."

He claims that the said bonds are in form and on the face thereof bonds and obligations of the State of Louisiana; that they were not due on the date of said sale, and are now immature as to the principal; that they are of such form and effect that the title thereto passes by delivery; that "defendant acquired all of said bonds long prior to the said 27th day of January, 1889 (the date of sale to plaintiffs), by purchase in open market for a full and valuable consideration in money, before the maturity thereof, in full and exact good faith, and with no knowledge, suspicion or belief of any defect in the title or obligations of said bonds, or any outstanding equity relating thereto, to change, modify, or destroy the obligation as written and contained in said bonds severally."

And he alleges that he sold and delivered the said bonds to plaintiffs in like good faith, believing in the full validity thereof (pp. 2 and 3, Record).

The case was submitted upon a statement of facts, to be found at pages 4 to 10 inclusive of the Record.

It is admitted that the bonds described in plaintiffs' petition (with the exception of bond No. 532) are a portion of the bonds which belonged to the Agricultural and Mechanical College fund and the Seminary fund of the State of Louisiana, and were in the possession of the State treasurer previous to and at the time of the adoption of the State Constitution of 1879, for the use of and belonging to said funds, and that the said bonds were in the possession of the State treasurer during the legislative sessions of 1880 and 1882. Record (pp 7, 9 and 10).

This admission is full and conclusive as to the identity of the bonds sued upon.

It is further admitted, that all of the bonds, of which

these formed a part, held by the treasury for the use of the Agricultural and Mechanical and Seminary funds on the first day of January, 1880, were declared by the 233d article of the State Constitution to be null and void after the said date, and that the legislature is forever prohibited by said article from making any provision for their payment.

Art. 233, Constitution of Louisiana, 1879. Admissions 10, 11, 12, 13, 24 and 25. Record.

It is admitted that the auditor and treasurer have refused to warrant for or to pay the coupons on the above described bonds falling due since the 1st day of July, 1889, and that they have given notice to the world since September, 1889, that the above described bonds are null and void and not legal debts of the State.

It is further admitted that E. A. Burke was Treasurer of the State of Louisiana from 1878 to 1888, and charged with the custody of said above described bonds, and that Burke has been indicted for the conversion of said bonds of the State to his own use: that he is now, and has been since 1889, a fugitive from justice, and that the governor has been authorized by the legislature to issue a reward for his apprehension.

Admissions, Record, p. 10.

These admissions establish that the bonds herein sued upon, with one exception, are bonds which were declared null and void by the organic law of the State, at a time when they were in the State treasury, and held for the benefit of certain State funds, and entirely within the control of the legislative power of the State.

They became dead and worthless papers in the State Treasury, and the legislature were forever prohibited by the Constitution from recognizing them or providing for their payment in principal and interest.

Still less was any State officer authorized to issue or put them in circulation.

The article of the Constitution referred to, directed the legislature to make provision for the destruction of these bonds.

The report of the legislative committee in 1880-82, showed that they were still in the treasury, and recommended their destruction, and the legislature in 1882 passed a concurrent resolution directing the auditor and treasurer to destroy them. Acts of Louisiana Legislature 1882, No. 127.

The numbers of the bonds belonging to these two funds, and thus declared to be null and void, had been published to the world by State Treasurer Dubuclet in his official report for the year 1878, and by his successor E. A. Burke, in his official report for 1879, and these numbers include the bonds herein sued upon, except bond 532.

Admissions 15, 16, 21, 24, 25.

It is admitted that both parties herein acted in good faith, and the question is who should bear the loss?

The plaintiffs, who purchased and paid the full market price for legal and valid Louisiana State bonds, and received for their money papers warranted to be such, but which are illegal and valueless (?), or the defendant, who sold and agreed to deliver certain well known securities for a sound price, and delivered instead worthless papers which had been declared valueless, and which had never been legally issued or placed upon the market?

We think this question can be readily answered under the law of Louisiana, which, as the place of the contract, should govern.

The learned judge of the Circuit Court decided this case, as he himself says, very hurriedly, and he does not seem, in his opinion, to have considered the effect of the Louisiana statute law. Opinion Record, p. 15.

The extent of the liability of vendors in general is fixed by our Civil Code.

C. C. 2474. The seller is bound to explain himself clearly respecting the extent of his obligations; any obscure or ambiguous clause is construed against him.

C. C. 2475. The seller is bound to warrant the thing which he sells.

C. C. 2476. This warranty has two objects. The first is the buyer's peaceable possession; and the second, the hidden defects of the thing sold.

C. C. 2500. Eviction is the loss suffered by the buyer of the totality of the thing sold, or a part thereof, occasioned by the right or claims of a third person.

C. C. 2520. Redhibition is the avoidance of a sale on account of some vice or defect in the thing sold, which renders it either absolutely useless or its use so inconvenient and imperfect that it must be supposed that the buyer would not have purchased it had he known of the vice.

In the case of sale of notes or bonds the law is:

C. C. 2646. "He who sells a credit or incorporeal right, warrants its existence at the time of the transfer, though no warranty be mentioned in the deed."

Law and reason require that the credit itself should exist, and it is not sufficient that the instrument representing it should be handed to the transferree. If the credit was extinguished by compensation or by prescription, the transferree would be entitled to warranty. 2 Trop. Vente, Secs. 934, 932.

Plaintiffs went to defendant to buy Louisiana 4 per cent. bonds. The bonds in question were delivered to him as such, and he paid the market price for them.

Defendant warranted the genuineness of the things sold and delivered, and must be held to that warranty. Art. 2439, Civil Code, says:

"The contract of sale is an agreement by which one gives a thing for a price in current money, and the other gives the price in order to have the thing itself. Three

circumstances concur to the perfection of the contract, to-wit: the thing sold, the price, and the consent."

The thing sold in this case was not delivered; Louisiana 4 per cent. bonds were sold and bought; worthless pieces of paper were delivered. Art. 2448, C. C., of Louisiana, says:

"Any effects of commerce may be sold, where there exists no particular law to prohibit the traffic thereof."

The fundamental law had taken these bonds out of commerce, destroyed their commercial character, and ordered their destruction.

Art. 2452, Civil Code of Louisiana, says: "The sale of a thing belonging to another person is null." In so far as these bonds were property at all, they belonged to the State, and had never passed into the private ownership of defendant.

The pretended sale of said alleged bonds is void for error. Arts. 1821, 1822, 1823, 1841, 1842-3-4-5, Civil Code.

Plaintiffs bought and defendant sold a certain thing, well known and of well defined value in the market, and defendant delivered a valueless article, possessing none of the substantial qualities of the object of the contract, and in no sense the thing which plaintiffs contracted to buy, and for which, through error, he paid the price.

The credit must have been legitimately constituted. If it was tainted with a vice which rendered it null or subject to rescission, the transferee would be entitled to the warranty. Likewise if the vendor had sold counterfeit bank notes. It is also necessary that the credit transferred should have been the property of the transferror; otherwise it will have been the sale of the property of another, and as such null. It must not be a debt contracted by an incapacitated person. 24 Laurent, sections 542-543.

Likewise, if the credit was extinguished in any other

way, or if it did not belong to the seller, and even when the credit is declared null and void. 4 Aubry & Rau, page 442: 16 Duranton, section 510.

Every sale of a credit subjects the transferree (unless otherwise agreed) to the warranty of the existence and validity of the credit, as well as his right of ownership thereof. He may therefore be held to the warranty in these three cases: First. When, at the moment of the transfer the credit did not exist, either because it had never legally existed, or because it had been extinguished by compensation, prescription, or otherwise. Second. If the credit is subsequently declared null or is set aside. Third. If it belongs to some one other than the transferror. 6 Marcadè on Article 1693, C. N p. 351, section 1.

The clear and positive articles of our Civil Code form the whole law of this case in its every feature, and can not be controlled or modified by any so-called Law Merchant even if its precepts or teachings may be inconsistent therewith.

The Civil Code of Louisiana is a statute, adopted originally as a whole in 1826, and reënacted in 1870.

The Supreme Court of this State has decided that the commercial law is not paramount, "and only prevails so far as not modified, limited or altered by statutory or constitutional provisions." 21st La. An. 568.

Again, in the 31st La. An.: The Supreme Court say (speaking of certain bonds to which we will refer hereafter): "We agree with the attorney general, that they ceased *to be negotiable by virtue of these positive declarations of legislative will, and that the usages and laws of commerce relative to negotiable paper are superseded by these relative enactments, and are inapplicable to the case. We follow the commercial law only when it does not conflict with statute laws of the State, but no further. It is within the power of the State to destroy the negotiability*

of all paper and withdraw from commerce such things as it may deem proper." (Italics ours.)

Sun Mutual Ins. Co. vs. Board of Liquidation, 31 La. An., p. 177.

In the face of this positive declaration by the highest court of our State, how can it be argued that the present controversy is to be controlled by the rules of the commercial law, and that the positive provisions of our Civil Code governing the contract of sale are to be overruled and set aside.

If it is within the power of the State "to destroy the negotiability of all paper, and withdraw from commerce such things as it may deem proper," is that power, exercised as it has been by a declaration in its organic law, operating upon property in its own possession, to be nullified and destroyed, either by the illegal and unauthorized acts of its own officer, or by the operation of the commercial law, which has no force or effect in the presence of a positive enactment?

Is it not clearly within the power of the State to suspend any and all of the provisions of the commercial law within its jurisdiction? Cannot the legislature abolish the days of grace? Cannot it do away with the necessity of protest and notice, and hold the endorser to liability as a principal? Has not the legislature absolute power to regulate by law all contracts within its jurisdiction and between its citizens, subject only to the limitations of the Constitution of the United States? And if so, what provision of that constitution has been violated by article 233 of the constitution of the State of Louisiana?

The so-called bonds sold to plaintiffs by defendant were, and are, the property of the State of Louisiana. They have never gone from her possession with her knowledge and consent. While in her treasury, and her property, they were cancelled by law as fully and completely as if their nullity had been branded upon them.

They were declared by law non-negotiable and out of commerce. Their destruction was ordered.

Had not the State the right to do these things with her own property in her own possession? and are not her own citizens and people doing business within her borders bound to know of this action, ordered as it was by the people in convention assembled, and published to the world in her organic law?

And yet it is contended by the defendant here that this action has no effect so far as he is concerned; that, notwithstanding the nullity of the bonds, notwithstanding that they have never been issued by the State, notwithstanding their cancellation by law, yet that he bought them in open market, that they are payable to bearer, and under the commercial law that they are good and legal bonds of the State such as he represented them to be.

This contention, if successful, would nullify the action of the State within its conceded powers, and would permit the unwritten commercial law to control the positive statute law of the State.

In the cases referred to by defendant's counsel the commercial law has been only enforced by our courts in the absence of statute law.

The contract of sale is regulated in its every feature by the provisions of our Civil Code, and they apply alike to the sale of real and movable property and rights and credits of every kind, and every contract of sale in Louisiana contains a warranty, express or implied, of the realty and value of the thing sold.

It will scarcely be pretended that the criminal act of a State officer in putting these void and worthless instruments on the markets, or the laches of other officers in failing to have them cancelled and destroyed, can give them that vitality which the legislature could not, and make them (what they are not) legal and constitutional Consolidated 4 per cent. Bonds of the State of Louisiana.

To admit such a proposition would concede the power of an officer charged with the emission of certain State or municipal securities to overwhelm the State or municipality with an unlimited and incontestable debt. The proposition carried to its legitimate conclusion would admit that Burke might have validly reissued the whole of the consolidated bonds surrendered to him for exchange and cancellation under the law, and might besides have issued duplicate or triplicate series of the constitutional bonds of the State to the ruin of the State; and that the officers charged with the exchange of the existing city bounded debt for a new series of four per cent. bonds under the Act of 1890, to be confirmed by a constitutional amendment to be adopted at the next elections, might also do the same thing. Such is not the law. The State can be bound by the act of one of its officers only when that act is done in pursuance of some law. The State is not liable nor responsible for an unauthorized or illegal act of one of its officers.

Moffat vs. U. S., 112 U. S., p. 24.

"The general principle of law is well known and definitely settled, that the agents' officers can not bind the corporation when they transcend their lawful and legitimate powers. * * * These considerations, as well as the dangerous nature of the opposite doctrine, demonstrate the reasonableness and necessity of the rule." Clark vs. City of Des Moines, 19 Iowa 209, Dillon J.

The treasurer not only had no warrant in law to put these bonds on the market, but he so put them in express violation of the law which had ordered their cancellation and destruction. (See House Journals, session of 1882, pp. 565–566, and concurrent resolution of 1882, No. 127, and act 121 of 1880, p. 154, sections 8 and 9.) The General Assembly could make no provision for the payment of these bonds, under express prohibition from the Constitution, nor infuse life into them by any act or omis-

sion. How can it be pretended that the treasurer was invested with greater power, and could, by violating the law and abusing his trust, emit bonds which would constitute a valid debt of the State?

Conceding all the protection that defendant claims for bonds, we assert that he can not claim to be an innocent third holder without notice.

The Constitution of the State, of which the defendants must be deemed to have knowledge, had declared the bonds delivered by the defendant to the plaintiffs "null and void after the first day of January, 1880, and that the General Assembly shall never make any provision for their payment." The treasurer of the State had, on January 1, 1880, in an official and public document printed in book form, and in obedience to a mandatory statute, transmitted to the governor, to be by him submitted to the General Assembly, a detailed and accurate statement of the respective accounts under his charge, among which conspicuously figured the bonds sold by defendants to plaintiffs, identified by numbers, amount and legislative sanction. All this long before the sale by defendant to plaintiffs, and at a time when they had had every opportunity of knowing, and in a form which they cannot be heard to deny that they did receive, that is, the notice given by the law itself, and the highest possible State law. At the very time that the defendant sold these bonds to plaintiffs, they had already been declared by the constitution, and they were in fact and in law, "null and void." Sec. 113 U. S. 497, 107 U. S. 697, 699.

In Buchanan vs. Litchfield, 102 U. S. 278, the constitution of Illinois provided that no county should incur any obligation to an amount, including existing indebtedness, in the aggregate exceeding 5 per centum of the value of the taxable property of said county. The city of Litchfield issued bonds in excess of the constitutional limita-

tions, and with the proceeds built up a waterworks system. Urging this ground of illegality of the bonds, the city resisted their payment. The court held that the purchasers of the bonds were bound to take notice both of the amount of the previous existing indebtedness and of the valuation of the taxable property of the county, which could be ascertained from the authorized official records, and declared the bonds null.

In Baily vs. Taber, 5 Mass. 285, it was held that when a statute provided that notes made or issued after a certain day should be utterly void, evidence was admissible on behalf of the makers to prove that the notes were issued after that day.

115 U. S. 384.

By act of 1872, No. 81, section 3, page 135, the "Free School Fund," created by act 182 of 1857, was abolished; and by section 6 of said act it was made the duty of the treasurer to sell the bonds belonging to said fund, and to apply the proceeds to a purpose therein stated.

In the case of Durant vs. Board, 29 An. 77, the plaintiff averred that he had purchased from the State, at a sale made by the auditor and treasurer, acting under act 81, of 1872, three of the bonds belonging to the free school fund, and prayed that the same be funded, and that he receive consolidated bonds in exchange. The supreme court decided that act 81, of 1872, was unconstitutional, null and void, and an act of spoliation, and that the plaintiff had acquired no title to the bonds by virtue of the pretended sale under said act.

We particularly call attention to the case of the Sun Mutual Insurance Company vs. Board of Liquidation, 31 Louisiana Annual, p. 175, from which we have already quoted.

It completely covers our case, but is much stronger in the fact that the bonds were placed upon the market by authority of law, and the innocent third holders were held

to knowledge that the law, under which they were thus uttered, was unconstitutional.

In the case of the Sun Mutual Ins. Co. vs. Board of Liquidation, plaintiff brought suit to compel the Board of Liquidation to fund eleven bonds of $1000 each of the series issued to the New Orleans, Jackson and Great Northern Railroad Company, under act of 1853. The State intervened, alleging that said bonds belonged to and constituted part of the "Free School Fund," in accordance with acts 321 of 1855, and 182 of 1857, and prayed that the same might be returned to it. It was established that said bonds did once belong to said fund, that they had been sold under the provisions of act 81 of 1872, and that the plaintiffs had acquired them before maturity, from persons who bought them at said sale, and that plaintiffs had no other notice of the fact that these bonds belonged to the "Free School Fund" than would result from their presumed knowledge of the acts and proceedings of the State and its officials. The supreme court first said that they had declared the act 81 of 1872 null and void in 29 An. 77, and that they adhered to the views therein expressed, and, proceeding, declared:

"The Free School Fund having acquired said bonds, they became under the said act of Congress and the acts of the Legislature of 1855 and 1857, carrying said act of Congress into effect, and under the Constitution of 1868, affirming said acts of 1855 and 1857, *inviolably appropriated* to the support of public schools, "and for no other purpose whatsoever." These laws, to all intents and purposes, took said bonds out of commerce. They were placed in the special and joint custody of the Secretary of State and Treasurer, who were required to execute duplicate receipts therefor, and "to be and remain a perpetual fund" "inviolably appropriated to the support of the public schools."

"We agree with the assistant attorney general that they

ceased to be negotiable by virtue of these positive declarations of legislative will, and that the usages and laws of commerce relative to negotiable paper are superseded by these positive enactments, and are inapplicable to the case. We follow the commercial law only when it does not conflict with statute laws of the State, but no further. (21 An. 568.) It is within the power of the State to destroy the negotiability of all paper, and to withdraw from commerce such things as it may deem proper. Nor are we prepared to say that the purchase of these bonds were guilty of no laches. They cannot plead ignorance of the laws of the United States, nor of the constitution, laws, and public acts of the State.

They, therefore, knew that sales of the assets of the school fund, under Act 81 of 1872, were illegal. They knew what bonds belonged to that fund, for they were exhibited in reports of the proper public officers. They knew that these bonds had been illegally sold to pay the floating debt, for the sale thereof was duly advertised for thirty days in the official journal, and due return made and officially published. Ordinary diligence and investigation of facts perfectly accessible and known, or presumed to be known, by all men would have protected plaintiffs."

It does not matter that coupons have been paid on these bonds.

The illegal act of an officer in recognizing a debt not due by the State does not amount to a ratification by the State. To ratify an act, one must have been able to perform it originally. 10 Wall, 683; 20 Wall, 667; 138 U. S. 693, 694.

The rule that the silence of the principal is a ratification of the illegal act of its agent does not apply to the State.

2 Hill S. Ct. N. Y. 160.

Nor do we admit that the commercial law, even if it

could prevail over the statute law of Louisiana, would sustain defendant in his contention. There is no principle in the law of negotiable instruments which relieves the transferror of such an instrument from the obligation of warranty heretofore mentioned. On the contrary, the jurisprudence asserts it.

In Benjamin on Sales, 4th American edition, page 695, we read: * * * "It has been held that the vendor who sells bills of exchange, notes, shares, certificates, and other securities is bound, not by the collateral contract of warranty, but by the principal contract itself, to deliver as a condition precedent that which is genuine, not that which is false, counterfeit, or not marketable by the name or denomination used in describing it," and in the note (*e*): "In many American cases this liability has been regarded as founded on an implied warranty. Thus it is held that on the sale of a promissory note the law implies a warranty that the signatures and endorsement upon it are made by persons who have capacity to make a valid contract, and are genuine," and numerous authorities quoted.

The vendor of forged school bonds is bound under his warranty to return the price paid for them. 19 Kansas 330.

Says Mr. Benjamin:

"A buyer may recover back the price paid to the seller who has warranted title when the goods for which the money was paid turn out to have been stolen and the buyer has been compelled to deliver them up, etc., and even without such warranty it has been said to be the undoubted right of a buyer to recover back his money paid on the ordinary purchase of a chattel, where the purchaser does does not get that for which he paid;" "and the same right exists in favor of the buyer, where he has paid money for forged script in a railway, or forged bills or notes, *or for an article different from that which was described in the sale.*" Benjamin on Sales, p. 308.

Again, he says: "Under this head may also properly be included the class of cases in which it has been held that a vendor who sells bills of exchange, notes, shares, certificates and other securities, is bound, not by the collateral contract of warranty, but by the principal contract itself, to deliver as a condition precedent *that which is genuine, not that which is false, counterfeit* or not marketable by the name or denomination used in describing it, and in a case quoted, where the defendant received the price on the delivery of unstamped bonds, both parties being ignorant that a stamp was necessary. The unstamped bonds were valueless. Held: that the defendant was bound to restore the price received, Tindal, C. J., saying, 'that the contract was *for real* Guatemala bonds, and that the case was just as if the contract had been to sell foreign coin, and the defendant had delivered counters instead.' It is not a question of warranty, but whether the defendant has not delivered something which, though resembling the article contracted to be sold, is of no value." Benjamin on Sales, p. 447.

If the defendant can be considered an innocent third party, of the two he is the least innocent, and under the well known rule of law must suffer.

He has sold us a worthless thing for a good one, representing it to be what it is not. He has our money, and if compelled to comply with his warranty he is no worse off than before. He has the same recourse that we have against his vendor and warrantor.

His claim that the State is liable can be urged by him against the State.

We did not buy from him a litigious right against the State, which can only be sued by its own consent. We bought and he agreed to sell and deliver valid, legal, undisputed bonds of the State of Louisiana, instead of which he has given us instruments which are unmarketa-

ble, and which are by law null and void, and which are so pronounced by the State through her proper officers.

This is no compliance with his contract, and plaintiffs are entitled to recover back their money as claimed. We can not be forced into a controversy with the State.

The bond No. 532 is claimed by the State to be null and void as having never been issued legally and by authority. Its negotiability has been stopped, interest is not paid upon it, and it amounts like the other bonds to a mere litigious claim against the State.

It is not such a bond as defendant contracted to sell and deliver, and under this warranty he is bound to return to plaintiffs the purchase price.

We respectfully ask that the judgment of the Circuit Court may be reversed, and that judgment may be rendered in this court in favor of plaintiffs in error, as prayed for.

Respectfully submitted,

E. H. FARRAR,
B. F. JONAS,
E. B. KRUTTSCHNITT,
Counsel for Plaintiffs in Error.

ANSWER TO DEFENDANT'S BRIEF.

On pages 49 and 50 of defendant's brief tables are given, showing that in the appropriation acts from 1880 to 1888, separate appropriation is made for the payment of the interest on the acknowledged debt due by the State to the Mechanical and Agricultnral College and Seminary funds.

This is in conformity to the directions of Article 233 of the Constitution, and is in nowise a recognition of the bonds formerly belonging to those funds; on the contrary is in lieu thereof.

The unauthorized and illegal payment of coupons by officers of the State, even if such payment estops the State from claiming back the money thus paid in error (which is not conceded), would not conclude the State to an acknowledgment of the validity of the bonds. Even the legislature is forever prohibited from such acknowledgment, or from making provision for their payment in principal or interest. If the legislature made appropriations for that purpose since January 1, 1880, such legislation was unconstitutional, and can not be held to estop the State from denying their legality.

But why should plaintiffs who bought legal and marketable bonds be forced to doubtful remedies against the State, which can be exercised by defendant if unluckily he has no warrantor.

The letter of the treasurer to the New York Stock Exchange, at page 92 of defendant's brief, is a private (not official) communication, and is not notice to the world.

Still less can it bind the State to the acknowledgment of bonds struck with nullity by the Constitution.

The argument on page 41 of defendant's brief, based on

the (known) typographical error in Treasurer Burke's report, goes for nothing in view of the full admissions Nos. 24 and 25, which could have been sustained by evidence if the admissions had not been made. There is no question of the identity of the bonds, or that they were in the State treasury when stricken with nullity.

Respectfully submitted,

E. H. FARRAR,
B. F. JONAS,
E. B. KRUTTSCHNITT,
Attorneys for Plaintiffs.

Clerk Supreme Court U. S.
FILED.
OCT 22 1894
JAMES H. McKENNEY,
CLERK.

2 4 4

SUPREME COURT OF THE UNITED STATES.

No. 14,766.

VICTOR MEYER AND ADOLPH MEYER, PLAINTIFFS IN ERROR,

versus

WALTER T. RICHARDS.

In Error to the Circuit Court of the United States for the Eastern District of Louisiana.—On Rehearing.

SUPPLEMENTAL BRIEF FOR PLAINTIFFS IN ERROR.

E. H. FARRAR,
B. F. JONAS,
E. B. KRUTTSCHNITT,
Counsel for Plaintiffs in Error.

T. H. Thomason, Print, N. O.

SUPREME COURT OF THE UNITED STATES.

No. 14,766.

VICTOR MEYER AND ADOLPH MEYER, PLAINTIFFS IN ERROR,

versus

WALTER T. RICHARDS.

In Error to the Circuit Court of the United States for the Eastern District of Louisiana.—On Rehearing.

SUPPLEMENTAL BRIEF FOR PLAINTIFFS IN ERROR.

In addition to our original brief, we respectfully call the attention of the Court to the case of Mrs. Sally C. Pugh vs. Moore, Hyams & Co., 44th Louisiana Annual Reports, page 209, which case has been decided by the Supreme Court of Louisiana since this cause was originally submitted. It was brought to the attention of the Court on the application for a rehearing.

We submit that it is a full and exhaustive exposition of the law of Louisiana, under which the contract was made, and by which all of its subsequent incidents of sale, warranty, etc., were governed.

We especially call attention to the very lucid concurring opinion of Judge Fenner.

Respectfully submitted,

E. H. FARRAR,
B. F. JONAS,
E. B. KRUTTSCHNITT,
Counsel for Plaintiffs in Error.

FILED.
JAN 4 1892
JAMES H. MCKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

GENERAL DOCKET No. 14,766.

October Term, 1891. Term No. 1202.

V. & A. MEYER, PLAINTIFFS IN ERROR,

versus

WALTER T. RICHARDS, DEFENDANT IN ERROR.

Appeal from the Circuit Court of the United States, Eastern District of Louisiana.

ARGUMENT ON BEHALF OF WALTER T. RICHARDS.

HENRY L. LAZARUS,
Attorney for Walter T. Richards, Defendant in error.

L. GRAHAM & SON, 99, 101, 103 GRAVIER ST., N. O.

STATEMENT OF POINTS.

I.

When a political body or State enters the markets of the world to borrow money or to pay its debts, in bonds or commercial paper of any form transferable by endorsement or delivery, it becomes subject to the same rules of the Law Merchant that affect or operate on private persons or merchants dealing in the same class of paper, by which any "innocent holder before maturity" is exempt from inquiries into the circumstances under which the obligation of the maker was first put into circulation.

II.

The rights of innocent good-faith holders of the commercial paper of the State of Louisiana, acquired before maturity, are not affected nor are their rights to be determined by the provisions of the Civil Code of Louisiana relating to warranty in case of sale of property movable or otherwise.

III.

The general commercial law, or the Law Merchant of the United States, relating to the rights and obligations of makers and holders of commercial and negotiable paper obtains and is in force in Louisiana.

IV.

Under the accepted Law Merchant, as it obtains in the United States, commercial paper, if actually the paper of the maker, if put on the market even through theft or embezzlement from the maker or owner, and in circulation passed into the hands of a *bona fide* third holder before maturity, confers a good title on such good-faith holder against the maker or former owner.

V.

If a State, by legislation, attempts to take away the negotiable character from any of its commercial paper in

circulation at the time of such legislation, such action to be effective must be both so public and specific as to the paper or obligations sought to be affected that there can be no doubt concerning the particular and specific obligations sought to be affected. There must be such specific designation or description that the restriction of negotiability will be apparent to dealers in that class of securities upon inspection of the obligation itself, or by certain indications including it in the restrictive legislation.

VI.

Where it is alleged as a defense against the payment of negotiable securities or obligations to a good-faith holder before maturity that the obligation had been cancelled by the maker, such cancellation, to be effective, must appear by an inspection of the obligation itself, and must be an unequivocal cancellation.

In all commercial dealings of States resulting in the emission of commercial paper or obligations, the acts and omissions of the fiscal officers of the State, whereby obligations of the State, binding on their face as obligations, are emitted and put into circulation so as to reach the hands of *bona fide* holders in the due course of trade and commerce, are the acts or omissions of the State itself as to all such obligations.

VII.

The vendor of commercial paper or public securities negotiable by delivery is liable *ex delicto* for bad faith, and *ex contractu* there is an implied warranty on his part that they belong to him and are not forgeries. Where there is no express stipulation, there is no liability beyond this.

SUPREME COURT OF THE UNITED STATES.

No. ——.

V. & A. MEYER, PLAINTIFFS IN ERROR,

versus

WALTER T. RICHARDS, DEFENDANT IN ERROR.

Appeal from the Circuit Court of the United States, Eastern District of Louisiana.

ARGUMENT ON BEHALF OF WALTER T. RICHARDS.

PLEADINGS.

V. & A. Meyer, the plaintiffs, having purchased on February 27, 1889, from Walter T. Richards, at the ruling market price on that day, thirteen bonds, six of the denomination of $1000 each, and numbered 740, 793, 846, 856, 900, 904; six bonds of $500 each, numbered 1971, 1963, 2010, 2020, 2026, 2057, and one of $500 numbered 532, averred in their petition that the bonds were purchased as good and legal bonds of the State of Louisiana, and that they acquired them without any knowledge or suspicion that

the bonds were not such as they were represented to be. They averred that long after the sale and delivery to them, to wit, in the month of September, 1889, they discovered and it was officially announced by the proper officers of the State, that the bonds described in their petition were not good, legal and valid bonds of the State, and that the said bonds had never been legally issued by the State; that the six $1000 bonds described was a portion of the Consolidated Bonds formerly held by the State Treasurer for the use of the Agricultural and Mechanical College Fund; that the six bonds of $500 each, described, constituted a portion of the Consolidated Bonds held by the State Treasurer for the use of the Seminary Fund; and that as to both the Mechanical and Agricultural College Fund and the Seminary Fund, the bonds held in trust for said funds were declared by the 233d Article of the Constitution of the State of Louisiana, to be null and void after the 1st of January, 1880, and that said article also prohibited the General Assembly from ever making any provision for their payment. That as to bond No. 532, it was averred that the same was null and void, because of the fact that it had never been legally issued; that since the discovery by the plaintiffs of the invalidity of the bonds and that the same were valueless, they made demand upon Richards to exchange said bonds for good and valid bonds of the State of Louisiana, or upon default to return the purchase price thereof; and they prayed for judgment accordingly.

The answer of Richards is a denial of all the material allegations of the petition and a joinder of issue of fact and law thereon.

In the third paragraph of his answer he avers:

"That on and before the 27th of February, 1889, this defendant was the owner of the bonds and obligations of the State of Louisiana, as set forth and described in said petition; that said bonds were and are on the face thereof

the bonds and obligations of the State of Louisiana, wherein, and by the terms whereof, the State of Louisiana, in due and competent form, have, under the warrant of due and competent acts of the Legislature and the Constitution of the State, undertook and promised to pay to the bearer of each of said bonds the full sum of money named in each of said bonds at the date named in said bonds, with interest as named therein; that none of the said bonds were on said February 27, 1889, due and payable, and at this time are not due and payable by the terms thereof, but are in law and in fact severally immature as to principal, and are of such form and effect that the title thereto passes by delivery; that this defendant acquired each and all of said bonds or obligations long prior to the 27th of Februray, 1889, and to the date of his sale thereof to the said plaintiffs, V. & A. Meyer, by purchase in open market for a full and valuable consideration in money before maturity thereof in full and exact good faith, and with no knowledge, suspicion or belief of any defect in the title or obligation of said bonds, or any outstanding equity relating thereto, to change, modify or destroy the obligation as written and contained in said bonds severally; and that he sold and delivered each and all of said bonds described in said petition to said plaintiffs at the dates stated in said petition for a valuable consideration, and in like good faith believing in the full validity thereof."

STATEMENT OF FACTS.

It is stipulated and agreed by and between the respective parties hereto, as well the plaintiff as the defendant, that the following shall be taken as the statement of facts in this cause, and shall stand and be taken as a special verdict in the cause.

1. The defendant, prior to the sale of the bonds to the plaintiffs, as averred in the petition, was the *bona fide*

holder of each and all of the bonds described in said petition, having acquired each and all of said bonds in open public market for full market value, with no notice whatsoever of any alleged vice or alleged illegality of the bonds, and the statements in that respect as set forth in defendant's answer herein are true.

2. The defendant so acquired said bonds long before he or the public knew that it was charged by any person that said bonds were illegally issued, and the impress of the seal of the State and the signatures of the several officers of the State, whose names appear on said bonds, are each and all of them genuine and true and in no manner forgeries.

3. The bond attached to this statement of facts, marked "A," is one of the bonds described in the petition, the others differing only in number and amount of the bond, and the coupons annexed to said bonds are all genuine, and were issued by the State of Louisiana when the bonds were originally issued.

4. All of the bonds described in the petition were issued under and by authority of an act of the legislature of the State of Louisiana, approved January 24, 1874, being act No. 3 of the acts of the said legislature, as published by authority of the State, and said act, as well as all other acts of the legislature referred to in any part of this statement of facts, *are* made part of this statement of facts, the same in all respects as if written herein *in extenso*.

5. The intent and purpose of said act No. 3 of the acts of 1874 was to scale down the public debt, funded and otherwise, by exchanging for such evidences of debt bonds issued under the provisions of said act No. 3 of 1874, at the rate of sixty cents in new bonds for each dollar of outstanding bonds or warrants of the description given in said act No. 3 of 1874. The bonds issued under said act No. 3 of 1874 are commonly known as and called "Consolidated Bonds," and will be so hereinafter designated in this statement of facts, and were all in the form of the said bond referred to in the third preceding statement of facts and made part thereof, differing only in amount and in the serial numbers impressed on the bond, and when given in exchange for other prior bonds or obligations of the State, in no manner

on the face of the consolidated bonds, referred to or described the obligation or obligations for which such bond had been exchanged, but appeared as the general obligation of the State to pay the bond with interest at the date named in the bond, and the holder or purchaser of such consolidated bond who purchased the same in the market had no means of ascertaining for *what prior obligation* of the State said bond had been given in exchange.

6. The State of Louisiana, under the provisions of an act of Congress approved March 3, 1827, 4th Statutes at Large, chapter 97, page 244, acquired public lands of the United States for the use of a seminary of learning, the title being vested in the State of Louisiana for the use of such seminary in such manner as the legislature of the State might direct.

7. The legislature of the State authorized the sale of said seminary lands and converted the same into money prior to the year 1874.

8. By the provisions of an act of the State legislature approved March 19, 1857, being act No. 182 of the acts of 1857, as published by authority, the State authorized the issue of State bonds to the amount of the price received for the said lands, amounting to one hundred and thirty-six thousand two hundred dollars in bonds, to be payable forty years from the first day of July, 1858, with interest at the rate of six per cent., and declared the same to be a perpetual trust, the bonds to be held in the joint custody of the secretary of state and the State treasurer, as fully and at large appears by said act No. 182 of 1857, made part hereof as if written into this statement of facts *in extenso*.

9. The bonds referred to in the last statement of facts, No. 8, remained in the custody of the treasurer and secretary of state as a trust until July 1, 1878, when, on the request of the then State treasurer and the then secretary of state, the funding board or board of liquidation, provided for by said act No. 3 of 1874, permitted the said treasurer and the said secretary of state to surrender the said trust bonds held by them for the Seminary fund under said act No. 182 of 1857, and take in exchange and place thereof sixty per cent. of the face thereof in consolidated bonds, issued under the so-called

funding act of 1874, scaling down the fund forty per cent. The seminary fund, as represented by said consolidated bonds, remained in that form in the joint custody of the secretary and treasurer of the state and represented the seminary fund until the adoption of the new State constitution of 1879, going into force January 1, 1880, and sometimes called the constitution of 1880.

10. Article 233 of the State constitution of 1880, now in force and made part of this statement of facts the same as if written here *in extenso*, declared the State indebted to said seminary fund in the sum of one hundred and thirty-six thousand two hundred dollars, and provided that this amount should be placed to the credit of that fund ont he books of the auditor of the State, upon which credit the State should pay an annual interest of four per cent., and "the consolidated bonds of the State now held for the use of said fund shall be null and void after the first day of January, 1880."

11. Under the provision of an act of Congress approved July 2, 1862, chapter 130, acts of 1862, 12th Statutes at Large, page 503, the State of Louisiana received from the United States two hundred and ten thousand acres of land for the support of an agricultural and mechanical college, as provided for in the act of donation. This land was sold by the State and realized the amount of three hundred and twenty-seven thousand dollars, which was invested in State bonds bearing six per cent. interest, and was in that condition at the date of the adoption of the so-called funding act or act No. 3 of the acts of 1874, the bonds being in the possession of the State held in trust for said Agricultural and Mechanical College fund.

12. The board of liquidation, provided for in act No. 3 of 1874, on November 30, 1874, took the surrender of said six per cent. bonds belonging to the Agricultural and Mechanical College fund, and gave in exchange therefor bonds issued under said act No. 3 of 1874, consolidated bonds to the amount of one hundred and ninety-six thousand two hundred dollars, being a scale-down of forty per cent. These bonds went into the custody of the State as representing the trust fund of the said Agricultural and Mechanical College so reduced by scaling.

13. Article 233 of the State constitution of 1880 declared the debt of the State to the said Agricultural and Mechanical College fund to be one hundred and eighty-two thousand three hundred and thirteen $\frac{3}{100}$ dollars, and ordered that amount to be placed to the credit of that fund on the books of the auditor of the State as a perpetual loan at five per cent, interest and declared the consolidated bonds held by the State for the use of said fund null and void after the first day of January, 1880, as appears by said article 233 of the State constitution of 1880, made part hereof.

14. At the time of the delivery of the consolidated bonds under act No. 3 of 1874, in exchange for the bonds of the Agricultural and Mechanical College fund, before that time representing that fund, there was no receipt given to the board of liquidation for the consolidated bonds so taken in exchange, nor was there anything on the face of the bonds, so given in exchange, to show that they belonged to any particular fund, or were in any manner impressed with any trust, but were, in all respects, of the same character and appearance as all other consolidated bonds issued under said act No. 3 of 1874.

15. That, although there was no record showing the particular bonds given by the board of liquidation to the said Agricultural and Mechanical College fund, or any record to indicate the serial numbers of such bonds, Antoine Dubuclet, at that time State treasurer, in his official report as treasurer for the year 1878, reported as on hand and representing the said Agricultural and Mechanical College fund consolidated bonds to the amount of one hundred and ninety-six thousand dollars ($196,000), numbered from 710 to 905 inclusive.

16. That on the 1st day of January, 1880, the consolidated bonds, representing both the Seminary fund and the Agricultural and Mechanical College fund, were in the possession of E. A. Burke, at that time treasurer of the State of Louisiana, and held by him as treasurer for the State, at the time the constitution of 1880 went into effect —that is, on the 1st day of January, 1880.

17. E. A. Burke continued to be treasurer of the State of Louisiana from 1879 to 1888, when his term of office expired, and a joint committee of both houses of the Leg-

islature examined his office and accounts and pronounced his accounts and office correct, and his successor took possession of the office with no charge of shortage of assets or bonds or defalcation of any character in Burke's administration of the office of treasurer, and the public were given to understand that Burke had been honest and faithful in his office and had perpetrated no act of fraud, and such was the belief amongst all those dealing in said bonds, and particularly was the belief of the said defendant.

18. The treasury authorities of the State having charge of the payment of its obligations paid from the public moneys of the State interest coupons attached to the bonds described in plaintiff's petition herein maturing after the first day of January, 1880, and made no question of validity of either the bonds or coupons presented for payment, and only refused to pay the interest coupons after twenty-one coupons maturing after the first day of January, 1880, had been paid by the State without any question of its liability or the validity of the coupons.

19. There has been no action instituted by the State to have the bonds described in the petition herein delared or adjudicated void or not to be the obligations of the State. There has been a session of the State Legislature since the State treasurer and treasury department of the State first refused to pay the coupons attached to said bonds, and that legislature adjourned without taking any action declaring said bonds void or illegally issued, or declaring them not to be obligations of the State.

20. The plaintiffs in this cause contend that the bonds named and described in the petition herein are not obligations of the State, because the serial numbers of said bonds agree with the serial numbers given by Antoine Dubuclet, as treasurer of the State, as the numbers of the bonds in his hands representing the said trust fund of the Agricultural and Mechanical College, in his official report as treasurer for the year 1879, except as to one of the bonds, being bond No. 532, for $500, which is not claimed to be the number of a consolidated bond held in trust for the Seminary fund on the 1st day of January, 1880; and while not contending that the seal and each and all of the signatures on said bonds are genuine, or

that the bonds were not issued under the authority of act No. 3 of 1874, the plaintiffs insist that E. A. Burke, while treasurer of the State and in possession of the bonds, illegally put the bonds in circulation, whereby they came into the hands of *bona fide* holders, being third persons, with no knowledge of any alleged fraud by such Burke, and contend that, even in the hands of such innocent holders, the bonds are void because of article 233 of the constitution of 1880, declaring the bonds held for both of said trust funds null and void from and after the 1st day of January, 1880.

21. E. A. Burke, as treasurer of the State, on January 1, 1880, the day when the constitution of 1879 went into effect and operation, made his report to the governor of the state of the treasury for the year 1879, in which report he, in statement "E," in respect to the Mechanical and Agricultural college, as he terms it, made the following statement:

Mechanical and Agricultural College.

196 bonds of $1,000 each issued by the State of Louisiana under act No. 3 of 1879, Nos. 710 to 905, inclusive	$196,000
2 bonds of $500 each issued by the State of Louisiana under act No. 3 of 1879, Nos. 42 and 43	200
	$196,200

And in respect of the "Louisiana State University or Seminary fund," as he terms it, made the following statement:

Louisiana State University or Seminary Fund.

164 bonds of $500 each issued by the State of Louisiana under act No. 3 of 1879, Nos. 1902 to 2065, inclusive	$82,000
2 bonds of $500 each issued by the State of Louisiana under act No. 3 of 1879, Nos. 4184 and 4185	200
1 bond of $1,000, consolidated debt city of New Orleans, dated July 1, 1852, No. 492	1,000
	$83,200

describing the bonds held for said fund as bonds issued under "act No. 3 of 1879," and from and after said report of January 1, 1880, until the expiration of his term of office, in 1888, he never again made any allusion to any bonds held for either of said trust funds.

22. That as to the particular bond sued on, numbered 532, dated January 1, 1874, the same is one of the consolidated bonds "issued under the provisions of act No. 3 of 1874, and was not of any of the bonds held by the State for either the Seminary fund or the Agricultural and Mechanical College fund, but was in circulation and in the hands of a *bona fide* holder at and prior to the 1st of January, 1880; that by the operation of the constitution of the State going into force January 1, 1880, particularly that subdivision thereof entitled "State debt," the holder of said consolidated bond had the right to exchange said bond for a bond of the State provided for in said constitution for 75 per centum of the face value of said bond, bearing interest at the rate of 4 per cent. per annum, as provided in said subdivision of said constitution, made part hereof; that after the first day of January, 1880, and while E. A. Burke was treasurer of the State, the owner of said consolidated bond No. 532, whose name is to both plaintiffs and defendant unknown, applied to the said E. A. Burke for the exchange of this particular bond for 75 per cent. thereof in said new bonds, the bonds to be given in such exchange being in the lawful custody of said Burke, and he, having the right to make such exchange, took into his possession the said consolidated bond No. 532 so surrendered and issued, and returned to the holder thereof a new bond for 75 per centum of the face value thereof, and instead of canceling said consolidated bond No. 532 he at once put the said consolidated bond No. 532 so surrendered in circulation with the mass of other State bonds, so that both the said surrendered consolidated bond No. 532 and the bond for 75 per cent. thereof exchanged therefor went into the hands of *bona fide* holders, with no knowledge of the frauds of said State treasurer; that at the time of the purchase of the said consolidated bond in open market by the defendant and the sale thereof to the plaintiffs, neither party nor the public had any knowledge or

suspicion of said fraud or that said surrendered bond had been put on the market or in circulation by the said Burke, treasurer.

23. That after the constitution of 1880 went into effect and after the first day of January, 1880, all of said bonds were stamped on the face thereof as provided by the second article of the debt ordinance adopted with said constitution with the words *public* " interest reduced to 2 per cent. per annum for five years from January 1, 1880; 3 per cent. per annum for fifteen years, and 4 per cent. per annum thereafter," and were at the time of the said purchase of said bonds by said defendant in the market as public bonds bearing that endorsement or stamp.

24. The six bonds sued upon, filed herein and numbered respectively 740, 793, 846, 856, 900 and 904 are a portion of the consolidated bonds of the State of Louisiana issued under act No. 3 of 1874, as herein set forth, and were held by the State treasurer at the time of the adoption of the State constitution of 1879, being so held for the use of and belonging to the Agricultural and Mechanical College fund, and that the said bonds were in the possession of the State Treasurer during the legislative sessions of 1880 and 1882.

25. That the six bonds numbered respectively 1971, 1993, 2020, 2010, 2057, and 2026, filed herein, and sued upon, are a portion of the consolidated bonds of the State of Louisiana issued by the State of Louisiana under act No. 3 of 1874, as herein set forth, and were in the possession of the State Treasurer previous to and at the time of the adoption of the State constitution of 1879 for the use of and belonging to the Seminary fund, as hereinbefore referred to, and that the said bonds were in the possession of the State Treasurer during the legislative sessions of 1880 and 1882.

26. That the bond herein sued upon and numbered 532 is a portion of the consolidated bonds of the State of Louisiana now being claimed by the State, as set forth in finding number 22 herein.

It is admitted that the State Auditor and Treasurer have refused to warrant for or pay the coupons on the above described bonds falling due since the first day of July, 1889, the prior coupons upon the said bonds having been

paid by the State of Louisiana through her auditor and treasurer, as hereinbefore recited.

It is further admitted that the Auditor and Treasurer of State have given notice to the world since September, 1889, that the above-described bonds are null and void and not legal debts of the State.

It is further admitted that E. A. Burke was Treasurer of the State of Louisiana from 1878 to 1888 and charged with the custody of said bonds belonging to the Agricultural and Mechanical College and Seminary funds, and that said Burke has been indicted for the conversion of said bonds of the State to his own use; that he is now and has been since 1889 a fugitive from justice, and that the governor has been authorized by the Legislature to issue a reward for his apprehension.

27. That if the plaintiffs are entitled to recover upon the acts and findings herein stated they are entitled to recover the amount prayed for in the petition in form as prayed for therein, unless said bond No. 532 for five hundred dollars stands on a different basis than the other said bonds.

HISTORY OF THE BONDS.

The bonds in controversy are all of a class known in the market as Louisiana Consolidated Bonds, and refer on their face for authority under which they were issued to Act No. 3, of the regular session of the State Legislature of 1874 (Session Acts of 1874, page 39). This Act, with amendments, is printed in Appendix "A" of this brief.

The act itself is a scheme of more than doubtful integrity, a device for scaling down the public debt of the State 40 per cent. practically without the consent of the holders of the evidences of the debt.

The first section provides: that the governor, lieutenant governor, auditor, treasurer, secretary of the State, and speaker of the House of Representatives shall constitute a commission, termed the Board of Liquidation empowered to receive the issue of State

bonds in various denominations, the whole issue limited to $15,000,000, payable forty years from January 1, 1874, with interest coupons at 7 per cent. payable semi-annually in New York, London, and New Orleans. By the terms of the act these bonds were to pass into the hands of the commission signed by the governor, auditor and secretary of State, to be held by the commission for the sole purpose of exchange for all valid outstanding bonds of the state, and all valid outstanding warrants for the payment of money at the rate of sixty cents in the bonds for every dollar in outstanding bonds and warrants exchanged. There is a provision in the act, in the event the Board of Liquidation or Commission refuse to exchange, the holders of the bonds or evidence of debt may apply to the court for relief under certain restrictions. The act further provides a fund for the payment of principal and interest, and was intended to compel the exchange and scaling of the public debt by neglect to provide for the payment of the principal and interest of bonds not surrendered or exchanged.

The Board of Liquidation construed the act and its powers to relate to all bonds, whether on the general market, in the hands of third persons, or held by theState or its officers as trustee for the several trust funds growing out of the donations of the Federal government to agricultural and educational college purposes. At the time of the adoption of this act there were two funds of this description in existence. The Seminary fund, growing out of an act of Congress approved March 3d, 1827 (4 Statutes at Large, chap. 97, p. 244), and the Agricultural and Mechanical fund, growing out of an act of Congress approved July 2d, 1862 (12 Statutes at Large, chap. 130, p. 503).

Both of these funds, prior to the date of the adoption of the scaling act of 1874, were invested in bonds by the

State under acts of the State Legislature, which in terms constituted the bonds, and they so appeared upon their face, to be held in trust in the joint custody of the treasurer and the auditor of the State, for the benefit of the institutions named. (See act No. 182, approved March 19, 1857, of the Session Laws of Louisiana of 1857.) (See findings 6, 7 and 8.)

The officers having these funds in trust, and having possession of the bonds representing the funds, considered the act of 1874, to apply to the bonds so held in trust, and surrendered them to the Board of Liquidation, and accepted 60 per cent. in consolidated bonds issued under act of 1874 in place of the surrendered bonds; the bonds so taken in exchange and accepted on account of the trust funds are not distinguishable from any other of the consolidated bonds delivered by the Board of Liquidation, except by the serial number, and had nothing on their face to show that they belonged to any trust, or were issued to replace bonds held in trust on account of the trusts. The exchanged bonds went into physical possession of the treasurer of the State, and were held by him as representing the trust funds, until the adoption of the constitution of 1879, that went into effect January 1, 1880.

If the bonds in controversy belong to the class referred to and proscribed by the constitution of 1879, we have then laid before the court the history of their origin, and their subsequent conversion under the funding act of 1874.

The State of Louisiana in 1879 adopted a new constitution, and the convention that framed it undertook again to scale the public debt in the matter of interest. That part of article 233 of the constitution relating to the Seminary and Mechanical and Agricultural College funds is as follows:

"The debt due by the State to the Seminary fund is

hereby declared to be $136,000, being the proceeds of the sales of lands heretofore granted by the United States to the State for the use of a seminary of learning, and said amount shall be placed to the credit of said fund on the books of the Anditor and Treasurer of the State as a perpetual loan, and the State shall pay an annual interest of 4 per cent. on said amount from January 1, 1880, for the use of said seminary of learning; and the consolidated bonds of the State now held for use of said fund shall be null and void after the first day of January, 1880, and the General Assembly shall never make any provision for their payment, and they shall be destroyed in such manner as the General Assembly may direct.

"The debt due by the State to the Agricultural and Mechanical College fund is hereby declared to be the sum of one hundred and eighty-two thousand three hundred and thirteen and three one-hundredth dollars, being the proceeds of the sales of lands and land script heretofore granted by the United States to this State for the use of the college for the benefit of agriculture and mechanic arts; said amounts shall be placed to the credit of said fund on the books of the Auditor and Treasurer of the State as a perpetual loan, and the State shall pay an annual interest of five per cent. on said amount from January 1, 1880, for the use of said Agricultural and Mechanical College; the consolidated bonds of the State now held by the State for the use of said fund shall be null and void after the first day of January, 1880, and the General Assembly shall never make any proviston for their payment, and they shall be destroyed in such manner as the General Assembly may direct.

"The interest provided for by this article shall be paid out of any tax that may be levied and collected for the general purposes of education."

It is admitted that although the consolidated bonds

representing both funds were in the hands of E. A. Burke, treasurer at the time of the adoption of the new constitution, and when it went into operation January 1, 1890, they were never destroyed but remained in Burke's possession, as treasurer, until he embezzled them and put them on the market as consolidated bonds of the State, appropriating the proceeds of the sale to his own use. The public remained in ignorance of this fraud and embezzlement, and of his issue of the bonds exchanged for those originally issued to the institutions mentioned, until long after Burke had retired from office On his retirement he setlted his official accounts and a committee was appointed to investigate his office, and they reported that he had been faithful to his duties and had honestly administered his office. If it be true that the bonds involved in this controversy were those given in exchange for those held in trust, then we have recited briefly the history of the bonds originally issued by the State and subsequently converted into consolidated bonds; all primary trace of the bonds that were surrendered in exchange was lost by the conversion; there is nothing upon the new consolidated bonds issued to indicate in any respect for what bonds they were issued, or under what law the primary obligation was recognized.

In connection with the history of these bonds, it would be well to refer to the case of the State of Louisiana on the relation of Durant vs. Board of Liquidation, decided in 1877 by the Supreme Court of Louisiana, and reported in the 29th Annual at page 78.

If the original bonds had been placed upon the market, fraudulently by the trustee, the purchaser could not claim to hold them *bona fide* because the statute authorizing their issue and the bond itself recited the fact that "they should constitute a perpetual fund in trust, never to be diverted to any other purpose."

The other features of the case with reference to the bonds and their history is sufficiently stated in the argument which we submit for the court's consideration.

ARGUMENT.

This suit is based upon bonds evidencing obligations of the State of Louisiana, and the primary and controlling question for the court's consideration is the nature and character of the bonds.

Briefly described, the bonds are unconditional obligations of the State of Louisiana to pay the holder thereof, at a fixed period, a certain sum of money; the amount of the bond and the date of its maturity are fixed definitely in the bond. The bonds in controversy are part of an entire series issued under and by virtue of a legislative act ratified and approved by constitutional amendment, and are only distinguishable from each other by their serial numbers. They are transferable by delivery, and the fact that they are issued by the State of Louisiana can in no manner affect their nature or character. They have in all respects the qualities of commercial paper, embracing every attribute belonging to negotiable securities. It is, therefore, necessary at the outset to determine the nature and character of these bonds—whether negotiable or non-negotiable—for upon the determination of that question turns the entire controversy.

There is no appreciable difference in character between the bonds issued by the Government of the United States, those issued by the State of Louisiana, or by a municipal corporation; and the rule of commercial law announced by this court is in principle equally applicable to all. It has been uniformly held by this court that obligations issued by the national government, payable unconditionally, at a fixed period and for a determined amount, constitute commercial paper, and are in all respects subject

to the general rules of law governing negotiable instruments.

In the Floyd acceptances, 7 Wallace, 675, this court said: "It must be taken as settled, that when the United States becomes a party to what is called commercial paper, *by which is meant that class of paper which is transferable by endorsement or delivery and between private parties, is exempt in the hands of innocent holders from inquiry into the circumstances under which it was put in circulation*—they are bound in any court, to whose jurisdiction they submit, by the same principles that govern individuals in their relations to such paper."

This court, speaking of the bonds issued by the commissioners of Mercer County, in the case of Mercer County vs. Hackett, said:

"This species of bonds is a modern invention intended to pass by manual delivery, and to have the qualities of negotiable paper; and their value depends mainly upon this character. Being issued by States and corporations they are necessarily under seal. But there is nothing immoral or contrary to good policy in making them negotiable if the necessities of commerce require that they should be so. A mere technical dogma of the courts or the common law can not prohibit the commercial world from inventing or using any species of security not known in the last century. Usage of trade and commerce are acknowledged by courts as part of the common law, although they may have been unknown to Brackton or Blackstone. And this malleability to suit the necessities and usages of the mercantile and commercial world is one of the most valuable characteristics of the common law.

"When a corporation covenants to pay to bearer, and gives a bond with negotiable qualities, and by this means obtains funds for the accomplishment of the useful enterprises of the day, it cannot be allowed to evade the pay-

ment by parading some obsolete judicial decision, that a bond, for some technical reason, cannot be made payable to bearer.

"*That these securities are treated as negotiable by the commercial usages of the whole civilized world, and have received the sanctions of judicial recognition* not only in this court, but of nearly every State in the Union, is well known and admitted." Mercer County vs. Hackett, 1 Wallace, 95.

In the case of Cook vs. United States, 91 U. S. 396, this court, referring to unmatured obligations of the National Government, said: "It was also conceded that genuine treasury notes, like those now in question, were before their maturity part of the negotiable commercial paper of the country. We so held at the last term in Vermilye & Co., vs. Express Company, 21 Wallace, 138." In Cromwell vs. County of Sac, this court said: "Obligations of municipalities, in the form of those in suit here, are placed by numerous decisions of this court on the footing of negotiable paper. They are transferable by delivery, and when issued by competent authority pass into the hands of a *bona-fide* purchaser for value before maturity, free from any infirmity in their origin." See also Louisiana vs. Jumel, 107 U. S. 740; Murray vs. Charleston, 96 U. S. 445; United States vs. State Bank, 96 U. S. 30; Morgan vs. United States, 113 U. S. 483.

If there were a lingering doubt as to the character of the bonds, that doubt would seem to be settled by the decision of the House of Lords, in the case of Goodwyn vs. Roberts, 1 Appeal Cases (L. R. 1876), 476, where the doctrine of Gorgier vs. Mieville, 3 Barn. & Cress., 45, is affirmed.

The mere inspection of the bonds in controversy must satisfy this court that they possess all the qualities of negotiable paper. The fact that the bonds were issued

by the state of Louisiana can in no manner affect them as negotiable instruments, nor relieve them from the operation of the general rule of commercial law applicable to negotiable securities. The general rule of law being that where States enter into the commercial field and borrow money on the faith of their obligations, they lay aside for the time being their sovereignty; and in the absence of statute their liability is controlled by the general commercial law regulating the rights of individuals.

Paraphrasing the language of Chief Justice Marshall in the case of the United States Bank vs. Planters Bank (9 Wheaton), it is, we think, a sound principle, that where a government issues its commercial paper, pledging its faith for its redemption, it divests itself so far as concerns the transaction of its sovereign character, and takes that of a private citizen. It descends to the level of those with whom it deals and takes the character and subjects itself to the rules of law which apply to those who issue commercial paper.

Speaking through the late Chief Justice, this court said: "It was conceded in the argument that, when the United States become parties to commercial paper, they incurred all the responsibilities of private persons under the same circumstances. This is in accordance with the decisions of this court. The Floyd Acceptance, 7th of Wallace, 557; United States vs. Bank of Metropolis, 15 Peters, 377."

In the case of Murray vs. Charleston, 96 United States, 445, Mr. Justice Strong, in language more emphatic and decisive, said:

"The truth is, States and cities, when they borrow money and contract to repay it with interest, are not acting as sovereignties. They come down to the level of ordinary individuals. Their contracts have the same meaning as that of similar contracts between private persons."

Mr. Justice Field, although one of the dissenting members of the court in Louisiana vs. Jumel, asserts the generally recognized doctrine "that when a State enters into the market of the world as a borrower, she, for the time, lays aside her sovereignty and becomes reponsible as a civil corporation." 107 U. S. 740. See also United States vs. Bank of Metropolis, 15 Peters, 392.

From the daily and unavoidable use of commercial paper by the United States and by the States and municipalities, they are as much interested as the community at large can be in maintaining the principles of commercial law involved in the proposition announced (15 Peters Rep. 377). So, therefore, applying the general rule of commercial law to the State of Louisiana, which this court has uniformly recognized and announced with reference to the obligations of the National government, it may be safely asserted that when the State of Louisiana issued its obligations unconditionally upon their face for a certain amount, and payable at a fixed time, she incurred all the liabilities which attached to obligations of the same character, of private individuals.

The next question for the court's consideration is: Does the general commercial law control the disposition of this controversy? The contention of the plaintiffs in this case is that the rights of the parties to the controversy are to be governed and controlled by the Civil Code of Louisiana, and with reference to the sale of the bonds by defendant Richards to the plaintiff Meyer, plaintiffs rely upon the Articles of the Code relating to warranty (Civil Code, Art. 2500, *et. seq.*). The warranty implied in contracts of sale under the law of Louisiana refers and is confined to sales outside of those governed by commercial law, such as the sale of negotiable instruments. And even were the warranty of the Code to be applied to the sale of negotiable securities, before a cause of action

could arise there must be an assertion of title, disturbance of possession, or eviction. There is nothing in this record which could justify the assumption that either the Mechanical and Agricultural College, through its accredited agents, or the Louisiana Seminary, through its officers, the alleged *cestui que trusts* of the bonds in controversy, or the State of Louisiana, the author and obligor of the bonds, have asserted by any legal proceeding the title or ownership of the bonds in controversy or have in any manner attacked their validity. The force and application of the statutory law embodied in the Code and applicable to contracts of sale other than negotiable securities results from an entire misapprehension of the law that is to govern and determine the controversy. Under the Civil Code of 1808 (260, Art. 7), the Code contained a provision which declared:

"That commercial cases are governed by the laws peculiar to commerce."

Martin (La. Rep.), N. S., Vol. 2, page 124; Robertson vs. Nott.

Martin's Rep., Vol. 12, 497: Barry vs. Louisiana Insurance Company.

When the Civil Code of the State was adopted in 1825, and which had for its foundation the Code of 1808, it was contemplated by its framers, and in furtherance of the purpose, a projet was prepared and submitted for legislative sanction, to have the general system of commercial law prevailing in England and in this country applied to commercial contracts. This is evident by reference to the Code itself; in illustration thereof, we refer to Art. 1914 of the Civil Code, which provides that "promissory notes and bills of exchange are not governed by this rule, but by those of commercial law." Other and numerous instances might readily be cited from the Code in confirmation of what is here said. See also Art. 3305, C. C.

It is true that this *projet* of a commercial code never received legislative sanction, and the courts were left free to apply the general commercial law to commercial transactions. The Supreme Court of this State has uniformly decided that with reference to commercial contracts and commercial obligations, the general commercial law was to control, even to the exclusion of the Code, in order that the commercial law of this State, as applied to commercial contracts, should be in perfect harmony with the law prevailing in the sister States of the Union.

Louisiana's great Chief Justice, in delivering the opinion of the court, in the case of Wagner vs. Kenner, 2 Rob. (La.) 122, said:

"The counsel for appellant has contended that all commercial questions were not intended to be regulated by the Code of Louisiana. That the legislature intended to prepare a code of commerce which should contain the principles according to which such questions should be solved. That they appointed *juris consults*, who prepared such a code, and that we have it in print, though it has never received the sanction of the legislature. The Superior Court for the late Parish of Orleans very early held that although the laws of Spain were not abrogated by the taking possession of the country by the United States, yet that from that event, the commercial law of the nation became the commercial law of New Orleans, and this court has frequently recognized the correctness of these early decisions, principally in cases of bills of exchange, promissory notes and insurance."

"And in a concurring opinion Mr. Justice Bullard, said:

I concur in the opinion pronounced by Judge Martin. The article 2055 of the Louisiana Code declares 'that where the term referred to by the contract consists of one or more months, the parties, if they have not made any other exception, shall be deemed to have meant

months in the order in which they stand in the calendar after the date of the obligation, and with a number of days such months respectively have.' The literal interpretation of this article would perhaps sustain the judgment of the commercial court; but I think it important to give it such a construction as will conform to the general commercial usage in this as well as other States."

Justice Garland dissented, on the ground that the Civil Code should control, and not the commercial law.

Harrod vs. Lafayre, 12 Martin, 29.

Robertson vs. Nott, 2 Martin (N. S), 122.

Talcott vs. McCubbin, 2 Martin, 304.

Barry vs. Insurance Co. 12 Martin, 498.

7 Martin, 460. See also McDonough vs. Millaudon, 5 La. 489.

In the case of Thompson vs. Mill, 4 Annual, 210, Mr. Justice Rost, whose predilections for the civil law were pronounced and recognized, speaking for the Court in a case where the general commercial law apparently came in conflict with the statutory provisions embraced in the Code, said:

"The last ground of opposition relates to the mode of stating the accounts, and of calculating interest. At the end of every year a balance of accounts and a balance of interest were struck, and carried together to the new account, thus calculating capital and interest, and charging interest upon the whole. This mode of stating the accounts was rejected by the auditors as being in violation of Art. 1934 of the Civil Code, and the question now submitted to us is, whether that article is applicable to merchant's account.

"The commercial law, as settled in the other States of this Union, has been uniformly followed by the courts of Louisiana, when no statutory provision has prevented a resort to it. Under that law it is well settled that, when

it is the custom of a place and the practice of the parties to strike a balance at fixed periods, and to render the account, it brings it to the case of a fresh agreement, at the beginning of each period, to lend the sum then due: though acquiescence in the account rendered is not considered *per se* an agreement to it, it is evidence from which it may be interred that the party who receives the account without objection, thereby agreed to continue the course of dealing and to retain the balance in his hands, rather than to pay it; the balance due is viewed as the capital of the creditor, which he leaves in the debtor's hands on paying interest. The rule is that where regular merchants' accounts are settled from time to time, interest on interest is allowed. Bainbridge & Co. vs. Wilcox, 1 Baldwin, 536, and authorities there cited.

"In France, where a disposition of law very similar to Art. 1934 of our Code exists, it is not considered as applying to merchant's accounts: 'Les compres courants peuvent etre arretes a des epoxues aussi rapprochees qu'll plait aux parties. Chaquefois Pinteret s'y liquide, et fair partie du solde transporte au nouveau compte ouvert. Il se trouve ainsi converte en capital pour le compte suivant. La regle Du Droit Civil que ne permit de capitaliser les interets qu' au bout d'une annee, est dans se cas saus application. Nincens 2,158. Peu import que le compte soit etabli entre de ux commercants, on etre un commercant et un simple particulier.' Dallox. Vol. 40, 221.

"In adjudicating upon commercial transactions much uncertainty often arises in consequence of the non-adoption of the commercial code, prepared by the framers of our Civil Code. It is safe to presume, however, that, in framing the Civil Code, they intended to leave our commercial jurisprudence as it was before, in harmony with that of other commercial nations. The appli-

cation of Art. 1934 to a case like this, is inconsistent with that presumption, and we concur with the courts and jurisconsults of France that it is not applicable."

Therefore, under the fixed jurisprudence of Louisiana, this controversy is to be governed and determined by the Law Merchant, as it has been announced by this court, by the courts of England and by our sister States.

The obligations of the State of Louisiana, evidenced by the bonds in controversy, were acquired by plaintiffs and defendant before maturity, in open market, for full value, and in ignorance of any defect or defence, if any such existed. It is a recognized rule of commercial law, universally accepted, that where commercial paper is so dealt with by its maker, that it is stolen from his possession and put into circulation through the act of the thief, and before its maturity passes into the hands of a *bona fide* holder, without notice of the wrong, there the *bona fide* holder takes a complete title, and it is no defence for the maker that the paper upon which he is sought to be held responsible was stolen from his possession. Nor would it be a defence that the obligation was without consideration, or that the debt had been discharged, unless the obligation itself was unequivocally and unmistakably cancelled, nor could any previous infirmity in the issue of the bond be urged as a defence against its validity or payment. In the case of Cromwell vs. County of Sac, this court said:

"The rule has been too long settled to be questioned now, that whenever negotiable paper has passed into the hands of a party unaffected by previous infirmities, its character as an available security is established, and its holder can transfer it to others with the like immunity, his own title and right would be impaired if any restrictions were placed upon his power of disposition. This doctrine, as well as the one which protects the purchaser without no-

tice, says Story, 'is indispensable to the security and circulation of negotiable instruments, and it is founded on the most comprehensive and liberal principles of public policy.' The only exceptions to this doctrine are those where the paper is absolutely void, as when issued by parties having no authority to contract; or its circulation is forbidden by law, from the illegality of its consideration, as when made upon a gambling or a usurious transaction. The plaintiff, therefore, holds the bonds and the subsequent coupons as his vendor held them, freed from all infirmities attending their original issue." Cromwell vs. County Sac, 96 U. S. 59.

This case was exceptional in its features; the county had appropriated $10,000 for the erection of a court house, and the bonds were delivered to the contractor in anticipation of the work to be done, who used part of the bonds as a corruption fund and disposed of the balance to innocent purchasers, the court house was never erected. When sued upon the bonds, the defence was that the bonds were void as against the county, having been issued for work to be done which was never performed.

In the case last referred to, this court in its opinion said:

"Whatever fraud the officer authorized to issue them may have committed in disposing of them, or, however entire may have been the failure of the consideration promised by parties receiving them, these circumstances will not affect the title of subsequent *bona fide* purchasers for value before maturity or the liability of the municipalities. As with other negotiable paper, mere suspicion that there may be a defect of title in its holder, or knowledge of circumstances which would excite suspicion as to his title in the mind of a prudent man, is not sufficient to impair the title of the purchaser. That result will only follow when there has been bad faith on his

part. Such is the decision of this court, and substantially its language in the case of Murray vs. Lardner, reported in the second of Wallace, where the leading authorities on the subject are considered." (96 U. S. 58.)

The doctrine is very fully and clearly stated by this court in the case of Short vs. Railroad Company. Mr. Justice Strong said:

"Bills of exchange and promissory notes are exceptional in their character. They are representatives of money circulating in the commercial world as evidences of money, of which any person in lawful possession may avail himself to pay debts or make purchases, or make remittances of money from one country to another, or to remit to places in the same country. Hence, as said by Story, J., it has become the general rule of the commercial world to hold bills of exchange as in some sort sacred instruments in favor of *bona fide* holders for a valuable consideration without notice."

Without such holding they could not perform their peculiar functions; it is for this reason it is held that if a bill or note endorsed in blank or payable to bearer, be lost or stolen and be purchased from the finder or thief without knowledge or want of ownership, the *bona fide* purchaser may hold it against the true holder. He may hold it though he took it negligently and when there was suspicion attending the transfer. Nothing short of actual or constructive notice that the instrument is not the property of the person who offers to sell it; that is, nothing short of malafides will defeat his right; the rule is the same as that which protects the *bona fide* endorser of a bill or note purchased for value from the true owner—the purchaser is not bound to look beyond the instrument,

Goodman vs. Harvey, 4 Ad. & E. 870.
Goodman vs. Simons, 20 How. 343.
Murray vs. Lardner, 2 Wallace, 110.
Matthew vs. Poythress, 4 Ga. 287.

The rule was first applied to the case of a lost bank note, and put upon the ground that the interest of trade, the usual course of business and the fact that the bank notes passed from hand to hand as coin, require it. It was subsequently held applicable to merchants' drafts, and in Peacock vs. Rhodes (2 Dug. 333), to bills and notes as coming within the same reason. 101 U. S. 563. See also 94 U. S. 753, 28 La. An. 552; Consolidated Association vs. Avegno; Hackett vs. Mercer County, 1 Wal. 175, 7 Wal. 678.

Now, there would and could be no question that if the obligations under consideration were, instead of being the obligations of the State of Louisiana, those of private individuals or of municipal corporations, their validity could not seriously be questioned, nor their binding force and efficacy successfully disputed, Does it make any difference, or is the question at all affected by the fact that the obligations are those of the State instead of those of an individual? We have already shown that when the State issued its bonds, obligating itself to pay money, it, for the time being, laid aside its sovereignty and subjected itself to the rule of the Law Merchant regulating the rights of individuals. But we are not without direct authority establishing the proposition that the notes or obligations of a sovereignty, immature and held by third persons, acquired in the usual course of business and *bona fide*, are binding upon its author. The case of Cook vs. United States is direct in point, and carries to the fullest extent the doctrine contended for. The bonds of the United States Government were *surreptitiously and fraudulently* issued by the Treasury officials of the National Government, and acquired by Cook in good faith and for value. After their redemption by the National Government, it was discovered that they were fraudulently issued, and action was brought against the

parties presenting them, for restitution of the money paid upon their redemption by the assistant treasurer. There was no question of the *bona fides* of Cook & Co. The Chief Justice, in concluding his opinion in the case, said:

"The notes were perfect and complete as soon as printed. They did not require the signature of any officer. As soon as they had received the impression of all the plates and dies necessary to perfect their form they were ready for circulation and use. In this respect they did not differ from the coins of the mint when fully stamped and prepared for issue. Coin is the money of commerce, and circulates from hand to hand as such. These notes represent the promises of the Government to pay money, and were intended to circulate and take the place of money to some extent for commercial purposes. Although not made legal tender as between individuals, they were, for their then face value, exclusive of interest, as between the Government and its creditors. (13 Stat. 221, sec. 8.) They were issued under the authority of an 'act to provide ways and means for the support of the Government' (13 Stat. 218, title.) in its great peril, and they bore the 'imprint of the seal of the Treasury Department as further evidence of lawful issue." The people were appealed to through their patriotism to accept and give them circulation. They entered largely and at once into the commerce of the country and passed readily from hand to hand as, or in lieu of, money. After the close of the war they became in a sense too valuable for circulation, and were on that account to a large extent withdrawn and held for investment. But it is insisted, on the part of the Government, that as the Act of April 12th, 1866, only authorized the Secretary of the Treasury to retire before their maturity notes 'issued' under the authority of some Act of Congress; he could only take up such as were actually put out by the 'physical act' of some authorized officer of the Gov-

ernment in pursuance of law. This we think is too narrow a construction of the Act. At the time it was passed the war of the rebellion was over. In the prosecution of this war an immense debt had been contracted To meet the pressing demands upon the credit of the Government, various forms of securities had been put forth, some of which like those now under consideration, would mature at an early date, and sooner perhaps than they could be met without the negotiation of new loans. In view of this possible contingency, Congress seems to have been desirous of meeting its obligations of this class whenever they could be exchanged for or retired with the proceeds of the sale of certain specified bonds having a longer time to run. The object evidently was to get rid of this species of debt; and we think the Act may be fairly construed to authorize the retirement of all notes of this class outstanding which the Government could be required to meet at maturity. Cook & Co. vs. United States, 91 U. S. 404.

What was decided in this case is more particularly emphasized by the dissenting opinion of Mr. Justice Clifford, with whom concurred Justices Field and Bradley. The second ground assigned by them for their dissent is, "That the United States are not liable for its paper promises, fraudulently or surreptitiously put into circulation, not even if the fraudulent act was perpetrated by Federal officials." For an affirmance of the doctrine announced in Cook vs. United States, see Dist. of Columbia vs. Cornell, 130, U. S. 660; Gorgier vs. Mœville, 3; Barn & Cress, 45; Goodwin vs. Robertson, 1. Appeal Cases (L. R.), House of Lords, 476.

There is no contention in this case as to the authority to make the bonds, or the genuinensss of the seal and signatures. As the findings of fact show, the bonds in dispute were acquired in open market, in good faith, before maturity, without knowledge of any fraud or irregularity in

the manner in which the bonds were put into circulation. We have shown that, as bonds issued by the State of Louisiana, they are negotiable instruments, governed and controlled by the Law Merchant, and that the sale by the defendant to the plaintiffs were of State bonds, and that the bonds were a good delivery, and that no one has asserted any right or title to their possession.

The contention, however, of the plaintiff is, that the bonds in controversy were by the Constitution of the State of Louisiana declared null and void, and the General Assembly were directed to make no provision for their payment, but cause them to be destroyed. (Art. 233 of the Constitution, 1879). And that because of said Constitutional provision, the bonds in controversy are not valid outstanding obligations of the State, and that the sale and delivery thereof by the defendant to plaintiff was a sale of a thing which had no existence. The fundamental error in this contention is, that the bonds referred to in the Article of the Constitution and which were declared null and void, are in no manner connected or identified by the State's record with the bonds in this controversy. The Article of the Constitution in question, fixed the liability of the State "to the Free School Fund" and refers to bonds issued prior to 1874, of which we have already given their history: and with reference to the bonds of the Seminary Fund, it only refers in general terms to "the Consolidated Bonds of the State now held by the State, for the use of said fund, shall be null and void after the first day of January, 1880." And with reference to the debt due by the State to the Agricultural and Mechanical College Fund, the amount of the State indebtedness is fixed in the Constitution, and the provision is made in the Constitution that the "Consolidated Bonds of the State now held by the State for the use of said fund shall be null and void after the 1st of January, 1880."

There is nothing in the article which in the remotest degree connects the bonds in controversy with the bonds which have been declared null and void, and ordered destroyed by the Constitution. As we have already said, the only feature by which the consolidated bonds under the Act of 1874 was distinguishable was their serial numbers, and there is nothing in the Constitution or in the records of the State which refers to these bonds by number, or which could place the dealer in State bonds upon his guard in purchasing bonds of the State. While we do not dispute the proposition that it was competent for the State of Louisiana at all times to modify or entirely abolish the application of the Law Merchant to negotiable securities issued by itself, or by its citizens, or even in proper form to restrict the negotiability of bonds issued by the State, our contention is that the legislature, to accomplish that end where the general Law Merchant has heretofore prevailed, must be clear and specific, for it is a rule of construction of statutes that they are not to be construed as altering the common law, or as making any innovation further than their words import. Shaw vs. United States, 101 U. S. 557.

Reliance is placed upon the opinion of the court in the case of the Sun Mutual Insurance Company vs. Board of Liquidation, wherein it is said: "It is within the power of the State to destroy the negotiability of all paper, and to withdraw from commerce such things as it may deem proper." While this is true, as we have already said, the intention to accomplish the purpose must be clear, precise and unmistakable. When the people, by constitutional direction or legislative enactment, intend to destroy the negotiability of State bonds, and take them without the operation of the general rule to which otherwise they would be subject, it is necessary to state specifically the particular bonds by number and description which

are to be freed from the operation of the general mercantile law. The bonds, negotiable in form, could not be affected without notice to the world, and that notice must be precise and express, and sufficient to place the public dealing in that class of securities upon their guard.

The doctrine announced by this court in Morgan vs. United States (113 U. S. 490) is in principle decisive here. In the case of Texas vs. White (7 Wallace), the legislature of the State of Texas undertook to restrict the negotiability of the bonds of the United States issued to the State of Texas, and payable by their terms to "the State of Texas or bearer," and that the public act of the legislature of Texas was notice, imposing restrictions upon the alienation of the bonds, and that every person who took a transfer must be held affected by notice, and any disregard of the restrictions conveyed no title to the alienees. A full consideration of the case by this court, in a masterly opinon prepared by Mr. Justice Matthews, concurred in by a unanimous court, overruled the decision in Texas vs. White; and in the cases that were dependent upon that doctrine in later reports. In the case cited, this court said:

"It is apparent that the original decision in reference to Texas indemnity bonds has been questioned and limited in important particulars in the subsequent cases involving the same questions. The position there taken, that the legislature of Texas, while the State was the owner of the bonds, could limit their negotiability by an act of which all subsequent purchasers were charged with notice, although the bonds on their face were payable to bearer, must be regarded as overruled."

The underlying principle upon which the doctrine in Morgan vs. United States is formulated is, that if it is the intention of the Government to withdraw its bonds from the operation of the Law Merchant, and restrict their

negotiability as commercial paper, it must be done in a manner that is unequivocal, so that the public may be advised of the fact that when they deal in or handle that class of securities they are informed particularly of their character.

We challenge the counsel in this case to put their finger upon the statute, constitutional or legislative, which in terms withdraws the bonds in controversy from the operation of the general rule of the Law Merchant applicable to all negotiable and commercial securities in the State of Louisiana, whether of individuals or of the State. See 130 U. S. 658, District of Columbia vs. Cornell.

But we are told that while it is true the constitution makes no reference, except by way of general description, to the bonds in controversy, the report of the State Treasurer shows that the Seminary bonds originally issued under the Statute of 1857, and the Agricultural and Mechanical College bonds, were funded under the Statute of 1874, and that the bonds given in exchange under the funding process bore certain numbers which are described in the treasurer's report. That the Article of the Constitution should be read in connection with the treasurer's report, and that we are presumed to have had knowledge of the contents of the treasurer's report, and through which we are concluded. If there be any merit in this contention, it would be conclusive against plaintiff's right to recover. The means of information and the knowledge of the character of the bonds were equally accessible to them as to defendant; and if that be the case, then they knew, or should have known, in what class of bonds they were dealing; they got exactly what they bought, and in the absence of fraud or concealment, defendant can not be held responsible, and it is admitted in this case that all parties acted in good faith.

If the bonds in controversy were in possession of the

State, or of its agents, at the time of the adoption of the constitution in 1879, or were held by the State Treasurer in trust for the institutions referred to, it was clearly and manifestly the duty of the State to have either cancelled or destroyed them, as directed by the constitution, or to, in some manner, have so defaced them as to destroy their negotiability, as was said by this court in the District of Columbia vs. Cornell. "When a maker of a negotiable instrument lawfully cancels it before maturity, his liability upon it is extinguished, and can not be revived without his consent. It is immaterial whether the cancellation is by destroying the instrument or by writing or stamping words or lines in ink upon its face, provided the instrument, in the condition in which he puts it, *unequivocally shows that it has been cancelled* (130 U. S. 658). See also Schepp vs. Smith, 35 La. Annual Rep., p. 1.

We recur to the fact, for the purpose of emphasizing it, that the bonds in controversy are in no manner and in no respect distinguishable from the entire series of bonds issued by the State under the Funding Act of 1874, except by the serial numbers which they bear. If knowledge were fixed upon the defendant by the treasurer's report of 1879, and if the defendant was bound to read the Constitution of the State in connection with that report, it would be impossible to conclude the defendant, because the report does not show that the bonds in controversy were the bonds held in trust for the Agricultural and Mechanical College or the Louisiana Seminary Fund. The treasurer's report put in circulation by the legislative department of the State refers to a class of bonds issued under *Act 3 of 1879*, and not bonds issued under *Act 3 of 1874*. Is the investor in State securities, negotiable in form and transferable by delivery, to examine the treasurer's report to know what bonds are held in trust? Is he to examine the statutes of the State in which bonds

are referred to before he makes the purchase: and if so, when he purchases bonds issued under an Act of 1874, is he required to examine the report of the treasurer and take judicial notice of an Act of 1879, which make no reference to, nor have any bearing upon the bonds of 1874? The mere statement of the proposition suggests its extravagence, not to say its absurdity. Defendant in this case acquired and sold to the plaintiffs bonds issued under Act 3 of 1874; had he examined the treasurer's report and were he bound to take judicial notice of its contents, he would have found simply that certain bonds issued under Act 3 of 1879 were held in trust, and that none of the bonds which he held were of the class described or were of the class of which he was about to dispose. Now, it is true, that Act 3 of 1879 has nothing whatever to do with the issue of bonds. It is an act calling a constitutional convention for the State of Louisiana. It is said that the description in the treasurer's report of the bonds held in trust for the Agricultural and Mechanical College and Seminary, described as bonds issued under Act 3 of 1879, was a typographical error. This is not true, as is perfectly manifest from an examination of the treasurer's report (see finding of fact, Sec. 21). In describing the bonds held for the Agricultural and Mechanical College, they are referred to as 196 bonds of $1000 each, issued by the State of Louisiana, under Act No. 3 of 1879, and two bonds of $500 each, issued by the State of Louisiana, under Act 3 of 1879. In describing the bonds belonging to the Louisiana State University or Seminary fund, they are referred to as 164 bonds of $500 each, issued by the State of Louisiana, under Act 3 of 1879, and two bonds of $500 each, issued by the State of Louisiana, under Act 3 of 1879. On the same page of the treasurer's report, a reference is made to bonds held in trust by the treasurer for the Equitable Life Insurance Company of Louisiana, and are accurately

described as bonds issued by the State of Louisiana under Act 3 of 1874, and their numbers are given. The then treasurer knew that he might at any time be called upon, by the Equitable Life Insurance Company, to surrender, upon demand, the specific bonds deposited, and there being a check upon him by this company, the bonds could not be disposed of.

There is another remarkable and striking feature in the report of Burke, as treasurer.

The amount of the indebtedness to the Mechanical and Agricultural College, as fixed by article 233 of the constitution, is the sum of $182,313. According to Burke's report, he held in trust for said fund $196,200 of consolidated bonds, an excess of $13,887 of bonds.

Now, as to this amount represented by bonds, in excess of said debt, the State would have no right, nor did she intend to affect them: and who can say what the numbers of those bonds were? They may have represented the bonds involved in this controversy, if the bonds herein are of the class proscribed by the constitution. As to the Seminary fund, the indebtedness is fixed by the constitution at the sum of $136,000, while Burke in his report acknowledges to hold in trust only State bonds to the extent of $82,200, a difference of $53,800, not represented by bonds in the possession of Burke, and held in trust by him. Who can undertake to say what the numbers on those bonds were, they having at one time been given in exchange for Seminary bonds, surrendered under the Funding act of 1874.

The fact is that Burke's report as treasurer is wholly unreliable, and if the defendant or plaintiffs had gone to it as a source of information, they would not have been advised of the status of the bonds said to be held in trust for the benefit of the institutions named.

It is perfectly evident that in preparing his report, sub-

sequently sent out by the Legislature of the State, it was done *ex industria* to mislead the public and to deceive those who might from time to time deal in State securities.

After the preparation by the treasurer of his report in 1880, and published by direction of the Legislature, there never was any subsequent reference to the bonds of the Agricultural and Mechanical College, or to those of the Louisiana Seminary in any report during the administration of E. A. Burke, as State Treasurer, which continued until May, 1888.

His books and the affairs of his office as treasurer were, under concurrent resolution of the House and Senate, examined by special committees and always reported upon as in perfect condition, with a full accounting.

The first report to which we will attract the court's attention is embodied in the journal of the Senate of 1880 (page 270). It is certified by the committee that they examined the stocks and valuables held by the State Treasurer as custodian, "and that your committee carefully compared and counted said bonds, stocks and securities, and found the same on hand." Those particularly referred to were "196 bonds of $1000 each, belonging to the Mechanical and Agricultural College; two bonds of $100 each, belonging to the Mechanical and Agricultural College;" "164 bonds of $500 each, belonging to the Seminary Fund, and two bonds of $100, belonging to the Seminary Fund." There is not the slightest reference to numbers, nor is there any means suggested in the report of identification of the bonds presumably on hand at the time with those now claimed to have been held in trust by the treasurer for the institutions named.

If the report of the treasurer of 1880 controls, then the bonds referred to were bonds issued, *not* under Act 3 of 1874, but, as described by him, bonds issued under

Act 3 of 1879. The committee, concluding its report, said: "Your committee further recommend the appointment of a joint committee of the General Assembly, with authority to destroy the bonds and coupons now in the treasury belonging to the free school fund, the Mechanical and Agricultural College fund and Seminary fund, as required by Article 233 of the Constitution." * * They then proceed to enumerate the bonds which are to be destroyed by the joint committee suggested, and no other reference is made to the bonds held in trust for the Mechanical and Agricultural College and the Seminary funds than the general description that so many bonds of such a denomination, aggregating so much money. Twice in the report do they refer specifically to the bonds without furnishing any means for identification or any reference to their numbers. Whether the committee suggested in the report was ever appointed, and if so, what action they took in reference to the destruction of the bonds, is not disclosed, so far as we are able to discover from the journals of the House or Senate. Those dealing in State securities, advised of the action of the General Assembly, that action directed by the Constitution, had the right to assume that what they recommended to do, was done; and if there be any fault, it is of the officers of the State of Louisiana, and not of those dealing with her commercial paper. In a report made to the General Assembly, in 1882, by the joint committee of the House and Senate, who were charged with the investigation of the books and vouchers of the Auditor of Public Accounts and State Treasurer, the committee made reference to the fact which left the inference that the bonds held in trust were not destroyed, and recommended that "all the balance of the bonds and coupons in the treasury are valueless, and we recommend that they be destroyed in presence of the Governor, Auditor and Treasurer, and such other citizens as may see proper to

attend." And they concluded their report after a minute examination with the statement: "In conclusion your committee state with gratification, that they have found both the departments examined, conducted in a thoroughly business-like manner, the books and accounts correct, neat and orderly, reflecting great credit on the clerks, who are gentlemen of ability, whose services to the State, in our opinion, have not been duly taken into consideration." *Senate Journal*, 1882, page 372.

Upon the filing of the report a concurrent resolution was adopted by the General Assembly directing the auditor and treasurer to carry the provisions of the report into effect. See concurrent resolution No. 127, page 178, of the Session Laws of 1882.

No further reference, so far as we have been able to discover, either in the journals of the Senate or House, or any legislative acts, was made to the Agricultural and Mechanical College bonds or the Seminary bonds until 1888, when E. A. Burke retired from the office of Treasurer of the State and was succeeded by the present incumbent. The last report of the joint committee of the Senate and House, elaborate in detail, is to be found in the official journal of the House of Representatives, page 543, *et seq.*

The committee find that the administration of the office of E. A. Burke, treasurer, was all that could be expected, in every detail and particular, and that he had made a full and complete accounting to his successor. The minuteness of detail of this report, coupled with the names of the distinguished gentlemen in the Senate and House who made it, would have satisfied even the most incredulous person that the administration of Burke as treasurer of the State of Louisiana was honest and faithful. In concluding the report the committee said: "In closing our labors your committe desires to say that we have received from the outgoing treasurer every possible

facility for the thorough prosecution of our examination also from the auditor, and we can not close our report without bearing testimony to the neat and systematic services of the clerical force of the treasurer's office in the discharge of the highly responsible duties devolving upon them, and for the thorough business-like manner in which the clerical force of the auditor's office have performed their labors. *House Journal*, 1888, page 543 to 557.

This report, presented to the public by the authority of the State, spread at large upon its journals, gave every assurance to the public that the administration of the office of treasurer had been honest, and inspired the public with confidence in the securities of the State. If the bonds in controversy were of those set aside for the Mechanical and Agricultural College fund and the Louisiana Seminary fund, the State of Louisiana, through her accredited agents, did all that she could by her public acts and declarations to mislead the public and to invite them to invest in those securities. But we say that there is nothing in the State's record to identify the bonds in controversy with those declared by the Constitution of the State to be null and void, and whose destruction was ordered. We had every right to assume that the mandate of the Constitution was carried out, and that the bonds of the State of Louisiana, which had been set aside for the funds mentioned, were, in obedience to the Constitutional mandate, destroyed, and that their destruction was carried out through the instrumentality of the committee appointed under the joint resolution of 1882. We are fortified and strengthened in this position by the last report of the joint committee on the State Treasurer's administration in 1888, approving his conduct in all particulars, in their own language, "the method of examination was by one member of the committee calling and checking the certified statement of the auditor and treasurer, one member checking the auditor's books and one

the treasurer's books, *until each and every fund in detail was checked and verified by the committee and found to be correct in every particular.*"

If the bonds under discussion were of the class contended for, it was the duty of the legislature in the absence of their physical destruction, to have so mutilated or defaced them as to prevent any imposition upon the public, and this mutilation should have been unequivocal. If it was their intention to destroy their negotiability, they should have done so by some act clearly, definitely and specifically describing the bonds, in order to destroy their negotiability, and legislation to suspend, or alter the rule of the Law Merchant with reference to these bonds, should have been of such a character as to preclude the possibility of the trading in, or negotiation of, the bonds. 130 U. S. 658, Cornell vs. Dist. of Columbia.

We might conclude this branch of the discussion by quoting the language of the Supreme Court of California, in the case of State of California vs. Wells, wherein Mr. Justice Baldwin, with the concurrence of Mr. Chief Justice Field and Justice Cole, said:

"It is said that the defendants were bound to know the facts. We do not perceive the force of this suggestion, or why they should be held to any greater knowledge than the regular agents of the State whose office and duty it was to ascertain the facts and to protect the public interests; but it can not be held that every man who deals with State securities is bound to search the books and records of the State's officers before proceeding to take an assignment of the claim against the State. We do not know that these books and papers are subject to public inspection; and if they are so held it might lead to very embarrassing results. In this case it appears that the law had already prescribed the method of procedure, deemed by itself a sufficient protection and notification of the

character of the claim, and the failure of the officers of the government to follow the law, ought not to be turned to the injury of a citizen, and made the occasion of ruining him for being no wiser than those officers to whom this class of duties is specially intrusted. The treasurer seems to have been equally deceived in regard to this matter as the defendants, and yet he is admitted to be a vigilant and faithful officer; the hardship and injustice therefore of holding the defendants responsible for these bonds is apparent."

In this case the auditor who was charged by law with the custodianship of the bonds, in connection with the treasurer, and through whose books all payments of interest passed, whose integrity is beyond question, and whose honesty of purpose is admitted, was deceived with reference to the bonds in question, if they were of those proscribed by the Constitution. What more could the dealer in State securities have done than was done in accepting as his guide the reports of the General Assembly of the State issued by its authority. Is every man who purchases State securities to be permitted to investigate the treasurer's vault, and count the bonds held in trust to see that those which he is about to purchase are not of that class, or is it sufficient to assume that what the Constitution and the law says shall be done, has been done when the General Assembly of the State certifies to the performance of the act as a fact?

We need not rest upon this proposition alone for the purpose of showing that the bonds in controversy are not of the class described in the Constitution and whose destruction were ordered.

The State, from 1880 to July, 1889, a period of nine years, and more than a year after the retirement of Burke from the treasurership, regularly paid the interest upon the bonds in controversy, and the Legislature of the

State, in its general appropriation acts, made provision for the same, recognizing the validity of the debt and estopping herself from disputing its binding force. The eighteenth finding of facts recites the treasury authorities of the State having charge of the payment of its obligations, paid from the public money of the State the interest coupons attached to the bonds described in plaintiff's petition herein, maturing after January 1, 1880, and made no question of the validity of either the bonds or coupons presented for payment, and only refused to pay the interest coupons after twenty-one coupons, maturing on January 1, 1880, had been paid by the State without any question of its liability or the validity of the coupons.

In every act of appropriation of the Legislature of Louisiana, from 1880 to 1888 inclusive, provision was made in general terms to pay the interest upon the consolidated debt of the State of Louisiana, without any discrimination or reference to any class of bonds issued by the State. See Session Acts of 1886, page 78.

In all the appropriation Acts, from 1880 to 1888, inclusive, separate appropriation is made for the payment of the interest on the acknowledged debt due by the State to the Mechanical and Agricultural College fund and the Seminary fund. In Act No. 71 of the Session Laws of 1880, sec. 1, page 75, the following appears:

"Interest on Seminary fund (art. 233 of the Constitution) to be paid to the Seminary of learning for the year 1880	$5,440 00
For the year 1881	5,440 00
Interest on fund now due to the Mechanical and Agricultural College (art. 233 of the Constitution) to be paid to said College for the year 1880	9,115 65
For the year 1881	9,115 65

In the Session Laws of 1882, Act No. 63, page 82, appropriation is made for the payment of interest on Seminary fund (art. 233 of the Constitution) to be paid to the Seminary of learning for the year ending June 30, 1883	$5,440 00
For the year ending June 30, 1884	5,440 00
For the payment of interest on fund now due to the Mechanical and Agricultural College (art. 233 of the Constitution) for year ending June 30, 1883	9,115 69
For year ending June 30, 1884	9,115 69"

The same distinct appropriation, in the same language, was made by the Legislature of Louisiana in its appropriation Act No. 52 of the Session Laws of 1884; also in the Session Laws of 1886, Act No. 47, page 78; also in Act No. 48 of the Session Laws of 1888, page 47.

The appropriation for interest under these various Acts is distinct and separate from the general appropriation by the Legislature for the payment of interest by the State upon its bonded debt.

It was the duty of the Auditor of the State, as defined by statute, to report to the General Assembly, at the commencement of each regular session, "a full and detailed statement of the public debt and a tabular statement showing separately the whole amount of each appropriation of the public money made by law, the amount paid under the same and the unexpended balance."

And under section 176, of the Revised Statutes, it was made the Auditor's duty to keep an account between the State and the state Treasurer and to report to the Governor quarterly the amount of money in the hands of the treasurer belonging to the State. (Rev. Stat. of La., 1870, secs. 175 and 176)

The office of Auditor, with the duties specifically out-

lined by law, operates as a check upon the disbursing officer of the State, the treasurer; and while it is true that the auditor, during the administration of Mr. Burke, was a gentleman above reproach and to whom no suspicion could attach, yet it is a fact that, for the period of time stated, the coupons upon the bonds in controversy, and bearing their serial numbers, were paid regularly to the holders of the bonds. This was a recognition of the State's liability and the validity of the bonds from which the coupons were cut. In the payment of the interest and the disbursement that was made the auditor and treasurer represent the State. Their acts and omissions within the line of their official duties are the acts or omissions of the government itself, "and in all commercial transactions," this court, in Cooke vs. United States, said, "their official negligence will be deemed to be the negligence of the government." They were specially charged with the duty of paying the interest coupons, and they were the only agents authorized to act for the government in that behalf. All who dealt with the State government in respect to those matters, dealt with them with a knowledge that the authority for their payment under legislative appropriation was with the auditor and the treasurer. 91 U. S. 202; Orleans vs. Platt, 99 U. S. 682.

In the case of Cooke vs. The United States, this court said: "A government may suffer loss through the negligence of its officers if it comes down from its position of soverignty and enters the domain of commerce; it submits itself to the same laws that govern individuals there. Generally in respect to all the commercial business of the government, if an officer specially charged with the performance of any duty and authorized to represent the government in that behalf, neglects that duty and loss ensues, the government must bear the consequence of his neglect.

As the government can only act through its officers, it

may select for its work whomsoever it will; but it must have some representative authorized to act in all the emergencies of its commercial transactions. If it fails in this, it fails in the performance of its own duties and must be charged with the consequences that follow such omissions in the commercial world. 91 U. S. 398; 99 U. S. Rep. 682.

And this is necessarily so; the government is an abstract entity, with no hand to write or mouth to speak, as in the case of an individual. It speaks and acts only through agents, or, more properly, officers; these are many and have various and diverse powers confided to them; their authority, as a rule, is defined by the constitution or statute creating their office. 7 Wallace, 376. See also Morgan vs. United States, 113 U. S.

The provision by the State and the payment of interest upon bonds said to be void because proscribed by the Constitution, precludes the State from raising any question as to their validity and binding force; and if the State herself could not be held to deny her responsibility upon her outstanding commercial paper *a fortiori*, are plaintiffs in this case precluded from raising any question as to the validity of the bonds sold by the defendant. The State, speaking through her accredited body, the legislature, has raised no question as to the validity of these bonds, nor has the institutions for whom they were said to have been held in trust attempted to assert title to them.

The State of Louisiana, through her accredited agents, has recognized her obligation resulting from the bond by the prompt payment of the interest; she has adopted the bond if they are of the class contended for, and those bonds in the hands of a *bona fide* holder before maturity are as against the State her valid outstanding obligations. The doctrine laid down by this court in Cooke vs. United States, in principal, covers this case. It is undoubtedly

true, as a general rule of commercial law, that where one accepts forged paper purporting to be his own, and pays it to the holder for value, he cannot recall the payment.

The operative fact in this rule is the acceptance, or, more properly, perhaps, the adoption of the paper as genuine by its apparent maker. Often the bare receipt of paper, accompanied by payment, is equivalent to an adoption within the meaning of the rule, because as every man is presumed to know his own signature and ought to detect its forgery by simple inspection, the examination which he can give when the demand upon him is made is all that the law considers necessary for his protection. He must repudiate as soon as he *ought* to have discovered the forgery, otherwise he will be regarded as accepting the paper. Unnecessary delay under such circumstances is unreasonable; and unreasonable delay is negligence which throws the burden of loss upon him who is guilty of it rather than upon one who is not. The rule is thus well stated in Gloucester Bank vs. Salem Bank, 17 Mass. 45. "The party receiving such notes must examine them as soon as he has the opportunity and return them immediately; if he does not he is negligent, and negligence will defeat his action." (91 U. S. 396 and 397).

The doctrine asserted in this case has its foundation in the full recognition of the sound and wholesome principle of estoppel. It would be unjust that the State of Louisiana for a number of years, acting through her legislature and her officers should recognize the validity of the bonds in question by the payment of the interest upon them, and then suddenly, after they were acquired by innocent holders, undertake to dispute their binding force.

The doctrine of estoppel applies with the same efficaciousness to the State of Louisiana that it would to individuals, and would anybody be bold enough to argue to

this court that if the transaction was one between private parties that the actions of the State already recited would not preclude them. We are not without authority in support ot our proposition. In the case of State vs. Taylor the Supreme Court of Louisiana said:

"Having deliberately and solemnly invoked these statutes —when she considered them essential to the protection and preservation of her rights under the contracts with the defendants now in question—she is estopped from asserting them or denying their validity when she may think her interests as to the same rights will require it. The State is bound by her judicial pleadings and admissions the same as private persons, and is entitled to no greater right or immunity as a litigant than they are. The doctrine of estoppel applies to the State just as it does to individuals; the plea in this respect is not *res adjudicata*, but estoppel, and should have been maintained; and consequently the State cannot be held in this action to deny the constitutionality of these two statutes in the validity and benefits of which she has heretofore invoked." (28 Ann. 462.

In the case of State of California vs. Wells, the Supreme Court said:

"It is the case of a party having, under these equitable circumstances, got into possession, *bona fide* and without fraud, of certain securities for a claim, apparently just, against the State, and then the State coming forward, not to demand possession of the securities, but seeking to hold him bound for the value of the securities, after he has parted with them. If this transaction occurred between private persons, there could be no doubt.

"The principle applies in such a case that the loss should fall upon him by whose fault or confidence it came; the condition of the person in possession would be the better under such a statement of facts. We see no difference

between a State and an individual in the application of this principle. A State should act with as much justice and be held to as strict responsibility as one of her own citizens in these matters of dealing and contract. And it is better that she should be held responsible for the actions of her agents than that she should reap the benefits of fraud committed upon innocent third persons by those agents under cover and color of authority." 15 Cal. 344.

The State of Louisiana is precluded and estopped from ever asserting as against the bonds in controversy their non validity. Nor has she, by any act since the knowledge of the alleged defalcation of her late treasurer, undertaken to stamp the bonds said to be embraced in Art. 233 of the constitution, with invalidity. It is a fact of which this court will take judicial notice that the legislature of the State of Louisiana was in session in 1890, and its statutes are barren of any reference to the bonds involved in this controversy. The State has taken no judicial proceedings to assert its title, and we only hear of the invalidity from the State treasurer and the auditor, who are without power to speak for the State and repudiate its just and honest obligations. We have no fear that this court, in the absence of the State and without any appeal from her in a controversy to which she is no party, will undertake to destroy the validity of the bonds involved in this controversy. In other words, no matter what the power of the court is, it is not prepared to repudiate the commercial obligations of a sovereign State by holding them in the hands of innocent people as invalid when the State itself is silent in the courts of the land.

Who is it that impugns or questions the validity of the bonds in controversy? It is not the State of Louisiana, speaking through her legislative department; it is the plaintiffs, who assail their validity because the State auditor and treasurer have refused to warrant for or to pay

the coupons on the bonds falling due since July 1st 1889; and because they have undertaken to give notice to the world that the bonds are null and void and not legal debt of the State, that their validity is assailed.

It will be argued in all probability that no action by the legislature was necessary, as the constitution itself had declared that the bonds held by the treasurer *in trust* for the Agricultural and Mechanical College and the Louisiana Seminary, were null and void. But we have shown that the bonds referred to in the constitution did not embrace the bonds in suit, there being nothing to identify the bonds in controversy with those attempted to be destroyed by the constitution. And we submit that it was not competent for the State auditor and treasurer, their duties being specifically defined by law, to assume and assert the power that the valid outstanding obligations of the State were null and void, and it certainly could not be contended that a power inherent only in the people and not delegated could be exercised by the auditor and treasurer to the extent of repudiating the State's obligations.

The fact that the auditor and treasurer refuses to pay the coupons could not in itself affect their validity, nor would it justify the plaintiffs in asserting that the bonds acquired by them from Richards were null and void. It is, to the knowledge of this court, a daily occurrence for municipalities and quasi-political bodies to fail or refuse to pay the maturing interest upon their obligations, and yet it would hardly be contended that by that fact alone the primary obligation would be void and of no effect.

If the bonds are valid bonds, as we submit they are, and the auditor and treasurer refuse to perform the duty which the law specifically imposes upon them, namely, to pay the interest upon the debt for which appropriation is made, mandamus lies to compel the performance of the duty.

The responsibility of the State to the holder of the bonds, the rights and the responsibility that it incurs as the author of negotiable paper, is identical with those duties to which individuals are subject, with this difference alone, that the State of Louisiana can not be sued. 15 Peters, 392.

And because of the failure to perform that duty, which the law imposes upon the auditor and treasurer, furnishes no ground for the plaintiff to assert the invalidity of the bonds, and seek in this proceeding to rescind the contract of sale.

If the bonds in controversy were of the class proscribed by the constitution, their negotiability were in no manner affected by the general declaration that the bonds held for the Mechanical and Agricultural College and Louisiana Seminary were null and void, 130, U. S. 658.

The action of the State by payment of the interest upon the bonds, after the declaration of their nullity, was, as we have already said, an adoption of the bonds and a recognition of their validity. If the bonds in controversy are the bonds referred to in the constitution, they were held in trust by the Treasurer of the State, and his disposition of them, in violation of the confidence reposed, amounted simply to a breach of trust upon his part, for which the innocent and *bona fide* holder can not be made to suffer. The indebtedness evidenced by the bonds to the Mechanical and Agricultural College, and the Louisiana Seminary, is fixed and recognized in the constitution, and the State's obligation resulting from acts of its own officers is double; first, to the college and the seminary, and second, to the innocent holders of the State's bonds. This court, in the Floyd acceptances, said:

"It is true that when once (a bill of exchange) made by a person having authority to make it in any given case, it

is not open to the same inquiry in the hands of a third party that ordinary contracts are, as to the justice, fairness and good faith which attended its origin or any of its subsequent transfers."

The breach of trust by the State's agents should not prejudice nor imperil the rights of the good-faith holder of the State's bonds, who acquired them in ignorance of any defect in their origin or subsequent transfer, and more particularly so where the State, the author of the bond and the creator of the trust, has by its acts for a long series of years contributed to bring about a condition of things through which innocent people might suffer. In the language of Chief Justice Parker, of Massachusetts: "It would seem to be a principle of natural justice, that where a loss has happened, he, through whose omissions it happened, should sustain it, although innocent, rather than him who is not only innocent but wholly without the imputation of negligence." 17 Mass. 43.

If, as we have already observed, it was the intention of the State to destroy the negotiability of the bonds, and release herself from future liability, it was clearly her duty to have so defaced and mutilated them that the public could not be imposed upon by the fradulent acts of the State's agents, and thereby prevent a wrong and injury to innocent purchasers; for the bonds on their face import a compliance with the law under which they were issued, and the purchaser was not bound to look further. 1 Wallace, 93.

After the State of Louisiana for a number of years had recognized the validity of the bonds, which are sought to be embraced within the class proscribed by Art. 233 of the Constitution of 1879, and paid the interest thereon semi-annually, the successor of Burke, the alleged defaulting treasurer, was applied to by the secretary of the New York Stock

Exchange for a list of the outstanding valid bonds of the State, issued under Act 3 of 1874, in order that the money centres of the world, through the medium of the New York Stock Exchange, might be properly advised by the officials of the State of Louisiana of the State's recognized obligations. W. H. Pipes, the Treasurer of the State, who succeeded Burke, under a communication of March 11, 1889, about a year after Burke's retirement from the State, addressed a communication to George W. Ely, Esq., Secretary of the New York Stock Exchange, enumerating the bonds issued, and giving their numbers as follows:

$1000 bonds Nos. 1 to 10,000.
$500 bonds Nos. 1 to 3305.
$100 bonds Nos. 1 to 4571, also 4573 to 4581.
No. 4572 has not yet been issued.

The present bonded debt of the State consists of issue of consolidated bonds	$12,110,500
Less retired in exchange for constitutional bonds	290,200
Leaving consolidated bonds under Act 3 of 1874	11,820,300
Constitutional bonds	217,650
Bonded debt	$12,037,950

In the communication he adds, the difference between these figures and those quoted consist in par certificates issued for fractional parts of bondable obligations and a certain obligation of the State which may be converted into bonds at some future period. It was signed W. H. Pipes, Treasurer of the State of Louisiana. (See appendix to brief.)

The treasurer, in giving the statement of the outstanding valid bonds of the State, made particular mention of

Bond No. 4572, for $100, that had not at the time of his communication been issued. No reference whatever is made to any consolidated bonds held by the State or its officers in trust, and no suggestion is made as to any of the bonds issued under Act 3 of 1874, the negotiability of which were in any manner affected.

In the bonds enumerated by Pipes as valid outstanding bonds are those in controversy, and they are embraced in the serial numbers referred to in his communication, there is nothing to indicate that of the bonds issued and referred to by Pipes there are any whose validity is questioned, and none whose negotiability are affected or destroyed by the article of the Constitution which is said to embrace the bonds here in controversy.

If there ever was a case presented to this court, or to any human tribunal, calling for the rigid application of the doctrine of estoppel, we submit this is one where every principle of natural justice and right should preclude not only the State from questioning their validity, but the plaintiffs, who, with knowledge accessible to them, with which we are charged, should be forever precluded, as against the defendant, from questioning the binding force, efficacy or validity of the bonds in controversy.

There remains on this branch of the case, for the court's consideration, one other bond not claimed to be embraced in the class of bonds proscribed by article 233 of the constitution.

The 22d finding of facts recites: That as to the particular bond sued on, No. 532, dated January 1, 1874, the same is one of the consolidated bonds "issued under Act 3 of 1874," and was not of any of the bonds held by the State for either the Seminary fund or the Mechanical and Agricultural fund, but was in circulation and in the hands of a *bona fide* holder at and prior to January

1, 1880; that by the operation of the constitution of the State going into force January 1, 1880, particularly that sub-division thereof entitled "State debts," the holder of said consolidated bond has the right to exchange said bond for a bond of the State, provided in said constitution, for 75 per centum of the face value of said bond, bearing interest at the rate of 4 per cent. per annum, as provided in said sub-division of said constitution made part hereof; that after January 1, 1880, and while E. A. Burke was treasurer of the State, the owner of said consolidated bond No. 532, whose name is to both plaintiffs and defendant unknown, applied to the said E. A. Burke for exchange of this particular bond for 75 per cent thereof in said new bond to be given in such exchange, being in the lawful custody of said Burke; and he, having the right to make such exchange, took into his possession the said consolidated bond No. 532 so surrendered, and issued and returned to the holder thereof a new bond for 75 per cent. of the face value thereof, and instead of exchanging said consolidated bond No. 532, he at once put the said consolidated bond No. 532, so surrendered, in circulation with a mass of other State bonds, so that both the said surrendered consolidated bond No. 532 and the bond for 75 per cent. thereof, exchanged therefor, went into the hands of *bona fide* holders with no knowledge of the fraud of said State treasurer; that at the time of the purchase of said consolidated bond, in open market, by the defendant, and the sale thereof to the plaintiffs, neither party, nor the public, had any knowledge or suspicion of said fraud, or that said surrendered bond had been put upon the market, or in circulation, by the said Burke, treasurer.

We can add nothing in the way of statement to the finding in reference to Bond No. 532 now under consideration. The State debt ordinance under which the bond was exchanged, and the legislative act carrying that ordi-

nance into operation, is printed in an appendix to this argument. (See State Debt Ordinance and Act No. 121 of Session Laws of 1880, page 154.)

When the State Treasurer received Bond No. 532, and in exchange thereof issued a bond under the State debt ordinance at seventy-five cents on the dollar, instead of cancelling the instrument by causing its destruction, or by writing or marking words or lines in ink upon its face, placing the instrument in the condition that it would show unequivocally that it had been cancelled (130 U. S. 658), he embezzled the bond and placed it upon the market, and it was acquired by the defendant in good faith and at its market value. There is no question that it is the bond of the State, that the signatures are genuine, that upon its face it bears the impress of the broad seal of the State, that it was originally lawfully issued under Act 3 of 1874, that it was immature at the date of the defendant's acquisition and of plaintiff's purchase, and that the instrument itself was negotiable, passing title by delivery.

The authorities which we have already referred to is conclusive and determinative of the question, and the case of Cooke vs. United States, 91 U. S., from which we have quoted at length, is decisive of the validity of the bond, and the State's responsibility thereon.

The case of the State of California vs. Wells, 15 Cal. Rep., is so strikingly similar to the case at bar that we call the court's particular attention to it. See also Cornell vs. District of Columbia, 130 U. S.; Morgan vs. United States, 113 U. S.

This, with the other bonds under consideration, the State paid interest on until January, 1890, when it was asserted by Pipes, the successor of Burke, State Treasurer, that the bond was invalid because it had been fraudulently or surreptitiously placed upon the market after it had been received by the treasurer in exchange for a

bond issued under the debt ordinance, notwithstanding the fact that the public were unaware and not advised that the bond was fraudulently issued. If the State itself does not know its own obligations, how is it possible for the commercial world to be advised of its outstanding debts. We speak of the commercial world, and we refer to those in the commercial world who deal in public securities, and who upon the faith of the State invest their earnings in the obligations of the State.

In the findings of fact, recital is made that E. A. Burke, the late treasurer is under indictment by the Grand Jury, of the Parish of Orleans, for embezzlement and conversion of the bonds held by him in trust, and reference is made to the fact, that the legislature, at its session in 1890, authorized the governor to offer a reward for his apprehension and arrest, he being a fugitive from justice. See Acts of 1890, No. 91, page 94.

If this finding was intended to refer to the bonds in controversy, it is an implied acknowledgment of the validity of the bonds. If the conversion of the bonds, for which he is indicted, are those referred to in article 233 of the constitution, and the constitution had the effect claimed for it, to-wit: the destruction of the bonds, and the bonds had no validity, there could not be a conversion or embezzlement of a thing having no value. His indictment is based upon the ground that he converted to his own use the bonds of the State, and of this it may be predicated that the bonds were valid obligations of the State, the conversion of which by Burke constituted a crime for which the indictment was found. It is only upon the theory that the bonds are valid outstanding obligations of the State, that an indictment would lie for their conversion.

The history of the Funding Act of Louisiana, known as Act 3 of 1874, under which all the bonds under con-

sideration were issued, is elaborately and learnedly discussed by this court in the case of Louisiana vs. Jumel, 107 U. S. 712, and will serve as an intelligent introduction to the consideration of this case.

If the exigencies of this case require that the defendant in resisting plaintiffs' demand should go further, notwithstanding the fact that the State up to this hour has not authoritatively raised her voice against the validity and binding force of the bonds in question, nor that the institutions who are the presumed beneficiaries have asserted no title or made attack in any manner upon the plaintiffs' possession or ownership,—we repeat, if the necessities of the case require more of us in our defense, we have only to say, that the warranty in negotiable paper is limited to the genuineness of the signatures of the maker. That the vendor neither warrants the solvency nor the honesty of the obligor, and when he acts in good faith, without notice of any invalidity or defect in, or title to same, that the only warranty that the law implies is that the signatures are genuine and not forgeries. This is the rule of commercial law, as settled by this court, and it is the law, as we have shown, by which commercial transactions in the State of Louisiana are to be governed, in the absence of statute regulating the subject. There was, at the time of the transaction between the plaintiffs and the defendant, no representation as to the validity of the bonds. They were dealt in as the bonds of the State of Louisiana as they were, and so understood by both plaintiffs and defendant. They were dealt in, in the commercial markets of the world as such, and there was no warranty, expressed or implied, beyond the genuineness of the signatures to the bonds by the officers who, under the law, were authorized to sign them.

All parties to these proceedings were admittedly in good

faith, and if the plaintiffs desired any further or additional warranty than that which the law implied, it was their duty at the time to have exacted it before accepting delivery. The means of information with which they attempt to saddle the defendant was equally accessible to them, and if the defendant was bound to have knowledge, so were the plaintiffs, whose position, in all respects, is equal to that of the defendant. The case of Otis vs. Cullom, 92 U. S., applies with peculiar force to the case here. In that case the bank, of which Cullom was the receiver, sold certain bonds issued by the city of Topeka. The city defaulted in the payment of interest, and the holder brought suit upon the bonds: this court held that the Legislature had no power to pass the acts authorizing the issue of the bonds, and the bonds were therefore void. Loan Association vs. Topeka, 20 Wallace, 655.

Upon the determination of that case, holding that the bonds were void, Otis, the holder of the bonds, brought suit to recover from the receiver of the bank the amount paid for eighteen bonds, with interest upon that sum. The ground relied upon was failure of consideration. The question presented to the court for its determination was whether, upon the statement of facts, plaintiffs had a valid cause of action. This court said:

"In Lambert vs. Heath, 15 Meeson & Welsby's Rep. 486, the defendant bought for plaintiff certain 'certificates of Kentish Coast Railway scrip,' and received from him the money for them; subsequently the directors repudiated the scrip upon the ground that it had been issued by the secretary without authority. The enterprise to which it related was abandoned. The action, which was for money had and received, was thereupon brought to recover back what had been paid for the scrip. The court put it to the jury to say whether the scrip bought was 'real Kentish Railway scrip.' A verdict was found

for the plaintiff upon this issue. A new trial was moved for, the defendant insisting that the court had misdirected the jury. After hearing the argument the court said: 'The question is simply this: Was what the parties bought in the market Kentish Coast Railway scrip? It appears that it was signed by the secretary of the company; and if this was the only Kentish Railway scrip in the market, as appears to have been the case, and one person chooses to sell and another to buy, that then the latter has got all he contracted to buy. That was the question for the jury; but it was not so left to them. The rule must therefore be absolute for a new trial.' The judges were unanimous."

"Here also the plaintiffs in error got exactly what they intended to buy, and did buy; they took no guaranty. They are seeking to recover, as it were, upon one, while none exists. They are not clothed with the rights which such a stipulation would have given them. Not having taken it, they cannot have the benefit of it. The bank cannot be charged with a liability which it did not assume. Such securities throng the channels of commerce which they are made to seek, and where they find their market. They pass from hand to hand, like bank-notes. The seller is liable *ex delicto* for bad faith; and *ex contractu* there is an implied warranty on his part that they belong to him, and that they are not forgeries.

Where there is no express stipulation, there is no liability beyond this. If the buyer desires special protection, he must take a guaranty. He can dictate its terms and refuse to buy unless it be given. If not taken he can not occupy the vantage ground upon which it would have placed him.

"It would be unreasonably harsh to hold all those, through whose hands such instruments may have passed, liable, according to the principles which the plaintiffs in error insist shall be applied in this case." 92 U. S., Otis vs. Cullom.

What the defendant sold and what the plaintiffs bought were unquestionably bonds of the State of Louisiana, issued under Act 3 of 1874, and dealt in the public markets of the world as Louisiana consolidated bonds. There is no question that the defendant acquired them in good faith, and were at the time of their disposition his property.

There was no guarantee beyond that which the law implies, and there was no stipulation that the State would as she was in honor bound, obliged to pay the interest as stipulated and retire the bonds at their maturity. It would be equally plausible for a plaintiff to undertake to recover from his vendor the value paid for State securities if the State, at a period subsequent to the transaction, undertook to repudiate her obligation; or, if a debtor, whose commercial paper had been sold in the public markets, should, before the maturity of the debt, seek relief in the courts by proceedings in bankruptcy. It would be equally reasonable to allow the purchaser of that paper to seek from his vendor restitution of the amount which he paid, when the source of information was equally open to both parties. The doctrine announced by this court in the case last referred to was affirmed in the case of the Ætna Insurance Co. vs. Middleport, 124 U. S. 546.

This was the ground that the Circuit Court took in awarding the decree against the plaintiffs in this cause. Transcript p. 15. See Orleans vs. Platt, 99 U. S. Rep. p. 679, affirming the doctrine laid down in Otis et al vs. Cullom.

We respectfully submit in conclusion:

1st. That the bonds in controversy are valid outstanding obligations of the State; their negotiability unaffected, and that the delivery of the same to the plaintiffs was a good delivery.

2d. That the defendant is not responsible in the action

brought, he having by the sale only warranted the genuineness of the signatures of those upon whom the law imposed the duty of signing.

We ask for an affirmance of the decree of the lower court.

Respectively submitted,

HENRY L. LAZARUS,

Attorney for Walter T. Richards, Defendant in error.

APPENDIX.

FUNDING ACT.

ACT III. OF 1874.

To provide for funding obligations of the State by exchange for bonds; to provide for principal and interest of said bonds; to establish a board of liquidation; to authorize certain judicial proceedings against it; to define and punish violations of this act; to prohibit certain officers diverting funds except as provided by law, and to punish violations therefor; to levy a continuing tax and provide a continuing appropriation for said bonds; to make a contract between the State and holders of said bonds; to prohibit injunctions in certain cases; to limit the indebtedness of the State, and to limit State taxes; to annul certain grants of State aid; to prohibit the modification, novation or extension of any contract heretofore made for State aid; to provide for the receipt of certain warrants for certain taxes, and to repeal all conflicting laws.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened*, That for the purpose of consolidating and reducing the floating and bonded debt of the State, the Governor, Lieutenant Governor, Auditor, Treasurer, Secretary of State and Speaker of the House of Representatives are hereby authorized to cause to be prepared, and to issue bonds, to be known as "consolidated bonds of the State of Louisiana," of the denominations of one hundred, five hundred and one thousand dollars, to the amount of fifteen millions of dollars, or so much thereof as may be necessary, all payable forty years from the first day of January, 1874, and all to be numbered consecutively, and made payable to bearer, and to bear interest at the rate of seven per cent. per annum, payable semi-annually in the city of New York and city of New Orleans,

on the first day of July and January of each year, and coupons for such interest shall be annexed thereto; said interest and principal to be payable in lawful money of the United States.

SEC. 2. *Be it further enacted, etc.*, That the parties designated in the foregoing section shall constitute a board of liquidation, and a majority of said board shall elect a fiscal agent for the State, who shall be a member of said board.

SEC. 3. *Be it further enacted, etc.*, That the bonds authorized by section one shall be signed by the Governor, Auditor and Secretary of State, and the coupons shall be signed by the Auditor and Treasurer; and when so prepared said bonds shall be exchanged by the board of liquidation for all valid outstanding bonds of the State and all valid warrants drawn previous to the passage of this act by the respective Auditors of Public Accounts of the State on the Treasurer thereof, except warrants issued by the Auditor in payment of the constitutional officers of the State, at the rate of sixty cents in consolidated bonds for one dollar in outstanding bonds and all valid warrants: *provided*, that the holder of any bond or valid warrant rejected by a majority of said board may apply by petition to the proper court for relief, and if final judgment shall be rendered in his favor against said board, it shall be the duty of said board to fund his said claim in bonds at the rate provided by this act; *and provided further*, that if any member of said board of liquidation shall knowingly audit and fund any illegal claim against the State he shall be deemed guilty of a misdemeanor, and shall, on conviction, be fined not less than five thousand dollars and be imprisioned not less than two years at the discretion of the court. And any person knowingly procuring the same to be done shall be subject to the same penalty.

SEC. 4. *Be it further enacted, etc.*, That the exchange of the bonds or valid warrants authorized by this act shall be effected by said board of liquidation in the cities of New Orleans and New York.

SEC. 5. *Be it further enacted, etc.*, That the consolidated bonds herein authorized shall be held and used by

said board of liquidation only for the purpose of exchange as aforesaid; said bonds shall be used for no other purpose or purposes than as authorized by this act, and any member of the board of liquidation using or attempting to use, or attempting to induce any person or persons to use, said bonds or any of them for any other purpose or purposes shall, on conviction thereof, be punished by a fine of not less than five thousand dollars, and by imprisonment at hard labor for not less than one year.

SEC. 6. *Be it further enacted, etc.*, That notice of the adoption of this act shall be published by said board in one or more journals of New Orleans, New York, London, Paris and Amsterdam.

SEC 7. *Be it further enacted, etc.*, That a tax of five and a half mills on the dollar of the assessed value of all real and personal property in the State is hereby annually levied, and shall be collected for the purpose of paying the interest and principal of the consolidated bonds herein authorized, and the revenue derived therefrom is hereby set apart and appropriated to that purpose, and no other. And that it shall be deemed a felony for the Fiscal Agent or any officer of the State or board of liquidators to divert the said fund from its legitimate channel, as provided, and upon conviction the said party shall be liable to imprisonment for not more than ten years nor less than two, at the discretion of the court. If there shall, during any year, be a surplus arising from said tax after paying all interest falling due in that year, such surplus shall be used for the purchase and retirement of bonds authorized by this act, said purchases to be made by the said board of liquidation, from the lowest offers, after due notice; *provided*, that the total tax for interest and all other State purposes, except the support of public schools, shall never hereafter exceed twelve and a half mills on the dollar. The interest tax aforesaid shall be a continuing annual tax until the said consolidated bonds shall be paid or redeemed, principal and interest; and the said appropriation shall be a continuing annual appropriation during the same period, and this levy and appropriation shall authorize and make it the duty of the Auditor and Treasurer, and the said board, respectively, to collect said tax annually, and pay

said interest and redeem the said bonds until the same shall be fully discharged.

SEC. 8. *Be it further enacted, etc.*, That the bonds and valid warrants outstanding at the time of the passage of this act, shall, as fast as they are received in exchange for consolidated bonds, be canceled and destroyed by the said board of liquidation, and consolidated bonds purchased, as provided for in section seven of this act, shall be canceled and destroyed after public notice has been given of the same in the official journal of the State, in the presence of as many citizens as may desire to be present; in like manner, and within ten days after such destruction, in each case, a *proces verbal* of the same shall be published and a report made to the General Assembly on the first Monday of every year, by said board.

SEC. 9. *Be it further enacted, etc.*, That it shall be the duty of the Auditor in his next annual report to give a detailed account of the proceedings had under this act, including the amount of new bonds issued, the amount of old bonds and valid warrants canceled, the amount of the same outstanding, and the cost of the exchange; and annually thereafter a full and exact statement of the condition of the public debt under the operations of this act.

SEC. 10. *Be it further enacted, etc.*, That any judge, tax collector, or any officer of the State, obstructing the execution of this act, or any part of it, or failing to perform his official duty thereunder, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by imprisonment not exceeding five years, and by fine not exceeding two thousand dollars, at the discretion of the court; *provided*, that this section shall in no wise prejudice or affect the criminal proceeding under section five of this act.

SEC. 11. *Be it further enacted, etc.*, That each provision of this act shall be, and is hereby declared to be, a contract between the State of Louisiana and each and every holder of the bonds issued under this act.

SEC. 12. *Be it further enacted, etc.*, That all grants of State aid heretofore made, whether of bonds, indorse-

ments, subscriptions of stock, or otherwise, which have become lapsed or forfeited, be and the same are hereby repealed and annulled, nor shall the State hereafter modify, novate, or extend any contract heretofore made for the giving of State aid in any form or under any pretext.

SEC 13. *Be it further enacted, etc.*, That the entire State debt, prior to the year of our Lord nineteen hundred and fourteen, shall never be increased, directly or indirectly, beyond the sum of fifteen millions of dollars, hereby authorized, it being the intent and object of this act, and of the exchanges to be effected thereunder, to reduce and restrict the whole indebtedness of the State to a sum not exceeding fifteen millions of dollars, and to agree with the holders of the consolidated bonds to be issued hereunder that said indebtedness shall not be increased beyond said sum during said period.

SEC. 14. *Be it further enacted, etc.*, That any tax collector who shall turn over any money or warrants by him collected, to any person except to the State Treasurer, shall be deemed guilty of a misdemeanor, and shall, on conviction, be subject to the penalties prescribed in section ten of this act, and shall, in addition thereto, be liable in damages in double the amount so turned over; and any State officer requiring or demanding that said taxes shall be turned over to him, except the Treasurer of the State, shall be liable, on conviction, to the same penalties as are prescribed in this section.

SEC. 15. *Be it further enacted, etc.*, That from and after the passage of this act until the first day of July, 1874, all valid Auditor's warrants issued for debts due prior to January 1, 1874, shall be received for all back taxes, licenses and interest and penalties thereon due prior to said first of January, 1874, except two mills for school fund, three mills for levee construction and repair fund, and two mills to the interest fund, for the purpose of paying any interest in arrears accruing on the bonded debt of the State prior to the passage of this act.

SEC. 16. *Be it further enacted, etc.*, That no court, or judge thereof, shall have power to enjoin the payment of principal or interest of any bond issued under this act,

or the collection of the special tax therefor, or to enjoin any officer of State or parish in receiving warrants, as is prescribed in section fifteen of this act.

SEC. 17. *Be it further enacted, etc.*, That all acts or parts of acts in conflict with this act, or any section thereof, are hereby declared to be repealed, and that this act shall take effect from and after its passage.

(Signed) CHARLES W. LOWELL,
Speaker of the House of Representatives.

(Signed) C. C. ANTOINE,
Lieutenant Governor and President of the Senate.

Approved January 24, 1874.

(Signed) WILLIAM P. KELLOGG,
Governor of the State of Louisiana.

A true copy:
P. G. DESLONDE,
Secretary of State.

CONSTITUTIONAL AMENDMENT.

ACT IV. OF 1874.

Proposing Amendments to the Constitution of the State of Louisiana.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened (two-thirds of the members of each house agreeing thereto)*, That the following amendments be proposed and entered upon the respective journals of the Senate and House of Representatives, with the yeas and nays taken thereon, and the Secretary of State shall cause the same to be published three months before the next general election for representatives to the General Assembly in at least one newspaper in every parish of the State in which a newspaper shall be published. And said proposed amendments shall be submitted to the people at said election in such manner and form that the people may vote for or against each amendment separately—*i. e.*, "first proposed amendment, for approval," or "against

approval," and in like manner as to the others; and if a majority of the voters at said election shall approve and ratify such amendment or amendments, the same shall be appropriately numbered and become a part of the constitution, and be proclaimed as such by the Governor and Secretary of State.

Proposed Amendments to the Constitution.

No. 1.—The issue of consolidated bonds authorized by the General Assembly of the State, at its regular session in the year 1874, is hereby declared to create a valid contract between the State and each and every holder of said bonds, which the State shall by no means and in no wise impair. The said bonds shall be a valid obligation of the State in favor of any holder thereof, and no court shall enjoin the payment of the principal or interest thereof, or the levy and collection of the tax therefor; to secure such levy, collection and payment, the judicial power shall be exercised when necessary. The tax required for the payment of the principal and interest of said bonds shall be assessed and collected each and every year until the bonds shall be paid, principal and interest, and the proceeds shall be paid by the Treasurer of the State to the holders of said bonds as the principal and interest of the same shall fall due, and no further legislation or appropriation shall be requisite for the said assessment and collection and for such payment from the treasury.

No. 2.—Whenever the debt of the State shall have been reduced below twenty-five million dollars, the constitutional limit shall remain at the lowest point reached, beyond which the public debt shall not thereafter be increased; and this rule continue in operation until the debt is reduced to fifteen million dollars, beyond which it shall not be increased. Nor shall taxation for all State purposes, excepting the support of public schools, ever exceed twelve and a half mills on the dollar of the assessed valuation of the real and personal property in the State, except in case of war or invasion.

No. 3.—The revenue of each year derived from taxation upon real, personal and mixed property, or from licenses, shall be devoted solely to the expenses of the said year for which it shall be raised, excepting any surplus re-

main, which shall be directed to sinking the public debt. All appropriations and claims in excess of revenue shall be null and void, and the State shall in no manner provide for their payment.

(Signed) CHARLES W. LOWELL,
Speaker of the House of Representatives.

(Signed) C. C. ANTOINE,
Lieutenant Governor and President of the Senate.

Approved January 24, 1874.

(Signed) WILLIAM P. KELLOGG,
Governor of the State of Louisiana.

A true copy:
P. G. DESLONDE,
Secretary of State.

AMENDMENT TO FUNDING ACT.

ACT II. OF 1875, EXTRA SESSION.

Supplemental to act No. 3, approved January 24, 1874, and to provide for testing at the instance of any taxpayer, in the courts of the State, the legality and validity of any items of State indebtedness, the legality and validity of which may have been or may hereafter be questioned; to prohibit the Board of Liquidation under said act, No. 3 of 1874, from funding the questionable and doubtful obligations of the State, named or designated in this act, until the same shall have been finally declared legal and valid by the Supreme Court of the State of Louisiana, and to provide the necessary means for carrying the provisions of this act into effect; to provide additional members of the said Board of Liquidation, and to repeal conflicting laws.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened*, That the Board of Liquidation constituted by the second section of act No. 3, approved January 24, 1874, entitled an act to provide for funding obligations of the State, by exchange for bonds, etc., is

hereby prohibited from issuing any bonds in exchange for any outstanding bonds of the State or warrants drawn previous to the passage of said act by the respective Auditors of Public Accounts of the State on the treasury thereof forming items of State indebtedness, the legality or validity of which may have been, or may hereafter be, questioned, until said bonds or warrants shall first, by final decree of the Supreme Court of the State of Louisiana, have been declared legal and valid obligations against the State of Louisiana, *and that the same were issued in strict conformity to law*, and not in violation of the constitution of this State or of the United States, and for a valid consideration. That any person assessed for State taxes is hereby authorized, in his own name, to institute suit, or to intervene in any suit which may now or hereafter be instituted in a court of competent jurisdiction in the parish of Orleans against said Board of Liquidation, to test the legality and validity of any issue of bonds of the State, or warrants drawn previous to the passage of said act No. 3 by the Auditor of Public Accounts on the State treasury, the legality and validity of which may have been or may hereafter be questioned, and to inquire into the consideration for which said bonds or warrants may have been issued, and in his own name to prosecute such suit or suits to a final termination; and until the legality and validity of each and every issue of bonds and warrants as aforesaid shall have been finally passed upon and determined by the Supreme Court of the State of Louisiana; and that, in order to facilitate and bring to a speedy determination all matters in controversy, as provided for in this act, every suit hereby instituted shall have precedence in all courts over all other cases, and to be fixed by motion of either party; the day of trial to be named in the motion, and all other cases fixed for the day named in the motion fixing such cases for trial to give way thereto; that all costs incurred in any suits under this act, to the extent of one suit carried to a final issue, as to each separate issue of bonds or warrants, the legality, validity or consideration of which are questioned, if the court shall so determine, shall be borne by the State of Louisiana, and which costs, on approval of the court, shall be warranted for by the Auditor of Public Accounts

on the State Treasurer, to be paid out of any funds in the treasury not otherwise appropriated; *provided*, that any holder or holders of bonds or warrants whose legality, validity or consideration is questioned in any suit or suits brought under the provisions of this act may intervene in said suit or suits, and that the costs of such interventions shall abide the result of the suits in which such interventions shall be filed.

SEC. 2 *Be it further enacted, etc.*, That the following issue of bonds and warrants, so far as the same may be now outstanding, are declared questioned and doubtful as to their legality and validity, and said Board of Liquidation are hereby prohibited from issuing bonds authorized by section one of act No. 3 of 1874 in exchange therefor until the legality, validity and consideration of the same shall have been tested under the provisions of this act, and a final decree rendered as to their legality, validity and consideration, to-wit:

First—The following bonds, considered and held as belonging to the redemption of the State debt funds and the free school funds, being bonds of the State of the various issues which had been redeemed or never issued, and which have been reported by the Auditor of Public Accounts as missing, or which were sold under act No. 81, approved May 25, 1872, and issued or reissued, namely:

The New Orleans and Nashville Railroad Company	$18,000
The Mexican Gulf Railroad Company	3,000
The New Orleans, Jackson and Great Northern Railroad Company	270,000
The New Orleans, Opelousas and Great Western Railroad Company	79,000
The Vicksburg, Shreveport and Texas Railroad Company	50,000
The Baton Rouge, Grosse Tete and Opelousas Railroad Company	30,000
The bonds for the relief of the State treasury,	65,000
The bonds issued for the free school fund	529,000
Total, one million, forty-four thousand and five hundred dollars	$1,044,500

Bonds under act No. 35, approved December 22, 1865, for expenses of building levees...	$1,000,000
Bonds under act No. 115, approved March 26, 1867, for expenses of building levees.....	4,000,000
Bonds under act No. 32, approved February 25, 1870, for work done or to be done on the levees.....	2,960,000
The bonds of the New Orleans, Mobile and Texas Railroad Company, issued under act No. 26, approved February 17, 1869.....	750,000
The bonds issued to the New Orleans, Mobile and Texas Railroad Company, under act No. 95, approved April 20, 1871.....	2,500,000
Bonds issued to the North Louisiana and Texas Railroad Company, under act No. 97, approved April 10, 1870, and act No. 108 of 1868.....	1,122,000
Bonds issued to the Mississippi and Mexican Gulf Ship Canal Company, under act No. 116, approved March 8, 1869.....	480,000
Bonds issued for the relief of P. J. Kennedy, under act No. 105 of March 25, 1870.....	134,000
Bonds purporting to have been issued for redemption of certificates of indebtedness under act No. 5, 1866.....	250,000
Bonds issued under act No. 146, approved January 3, 1870, for aid to the Bœuf and Crocodile Navigation Company	80,000

And it is further provided, That the Attorney General or Assistant Attorney General shall promptly and faithfully conduct to a final termination through all the courts all suits instituted, or which may hereafter be instituted, to test the legality, validity or consideration of the debts in this section set forth, and all the floating debt, the payment of which was enjoined in suit No. 369 of the Superior District Court, entitled the State of Louisiana vs. Charles Clinton, Auditor, and Antoine Dubuclet, Treasurer, nor shall he or they dismiss any of said proceedings, or compromise or waive any rights of the State, on any matter connected with the testing of said items of indebtedness.

SEC. 3. *Be it further enacted, etc.*, That the Board of Liquidation provided by act No. 3 of 1874, approved January 24, 1874, shall hereafter consist of the persons mentioned in the first and second sections of said act, and in addition thereto the president of the Cotton Exchange, in the city of New Orleans, shall be a member of said board, and the president of the Board of Trade in the city of New Orleans shall also be a member, in case such Board of Trade be established by statute and not otherwise provided; that any delay, refusal or inability of either or both of said last named persons to qualify as members of said board, or the non-existence of either, shall not affect the validity of the said board and its acts, and a majority of said board shall be required in order to perform an official act.

SEC. 4. *Be it further enacted, etc.*, That all laws or parts of laws contrary to or inconsistent with the provisions of this act are hereby repealed, and that this act take effect from and after its passage.

(Signed) E. D. ESTILETTE,
Speaker of the House of Representatives.

(Signed) C. C. ANTOINE,
Lieutenant Governor and President of the Senate.

Approved May 17, 1875.

(Signed) WILLIAM P. KELLOGG,
Governor of the State of Louisiana.

A true copy:
P. G. DESLONDE,
Secretary of State.

CONSTITUTION OF THE STATE OF LOUISIANA.

The Free School Fund, Seminary Fund, and Agricultural and Mechanical College Fund.

ART. 233. The debt due by the State to the free school fund is hereby declared to be the sum of one million one hundred and thirty thousand eight hundred and sixty-seven and $\frac{51}{100}$ dollars in principal, and shall be placed on the books of the Auditor and Treasurer to the credit of the

several townships entitled to the same; the said principal being the proceeds of the sales of lands heretofore granted by the United States for the use and support of free public schools, which amount shall be held by the State as a loan and shall be and remain a perpetual fund, on which the State shall pay an annual interest of four per cent. from the first day of January, 1880, and that said interest shall be paid to the several townships in the State entitled to the same, in accordance with the act of Congress, No. 68, approved February 15, 1843; and the bonds of the State heretofore issued, belonging to said fund and sold under act of the General Assembly No. 81 of 1872, are hereby declared null and void, and the General Assembly shall make no provision for their payment, and may cause them to be destroyed.

The debt due by the State to the seminary fund is hereby declared to be one hundred and thirty-six thousand dollars, being the proceeds of the sales of lands heretofore granted by the United States to the State for the use of a seminary of learning, and said amount shall be placed to the credit of said fund on the books of the Auditor and Treasurer of the State as a perpetual loan, and the State shall pay an annual interest of four per cent. on said amount from January 1, 1880, for the use of said seminary of learning; and the consolidated bonds of the State now held for use of said fund shall be null and void after the first day of January, 1880, and the General Assembly shall never make any provision for their payment, and they shall be destroyed in such manner as the General Assembly may direct.

The debt due by the State to the Agricultural and Mechanical College fund is hereby declared to be the sum of one hundred and eighty-two thousand three hundred and thirteen and $\frac{3}{100}$ dollars, being the proceeds of the sales of lands and land scrip heretofore granted by the United States to this State for the use of a college for the benefit of agriculture and the mechanic arts; said amounts shall be placed to the credit of said fund on the books of the Auditor and Treasurer of the State as a perpetual loan, and the State shall pay an annual interest of five per cent. on said amount from January 1, 1880, for the use of said Agricultural and Mechanical College; the consolidated

bonds of the State now held by the State for the use of said fund shall be null and void after the first day of January, 1880, and the General Assembly shall never make any provision for their payment, and they shall be destroyed in such manner as the General Assembly may direct.

The interest provided for by this article shall be paid out of any tax that may be levied and collected for the general purposes of public education.

DEBT ORDINANCE OF CONSTITUTION OF 1879.

State Debt.

ARTICLE 1. *Be it ordained by the people of the State of Louisiana in Convention assembled*, That the interest to be paid on the consolidated bonds of the State of Louisiana be and is hereby fixed at 2 per cent. per annum for five years from the first day of January, 1880; three per cent. per annum for fifteen years, and four per cent. per annum thereafter, payable semi-annually; and there shall be levied an annual tax sufficient for the full payment of said interest, not exceeding three mills, the limit of all State tax being hereby fixed at six mills; *provided*, the holders of consolidated bonds may, at their option, demand in exchange, for the bonds held by them, bonds of the denomination of five dollars, one hundred dollars, five hundred dollars, one thousand dollars, to be issued at the rate of seventy-five cents on the dollar of the bonds held and to be surrendered by such holders, the said new issue to bear interest at the rate of four per cent. per annum, payable semi-annually.

ART. 2. The holders of the consolidated bonds may at at any time present their bonds to the Treasurer of the State, or to an agent to be appointed by the Governor—one in the city of New York and the other in the city of London—and the said Treasurer or agent, as the case may be, shall indorse or stamp thereon the words, "interest reduced to two per cent. per annum for five years from January 1, 1880; three per cent. per annum for fifteen years, and four per cent. per annum thereafter;" *provided*,

the holder or holders of said bonds may apply to the Treasurer for an exchange of bonds, as provided in the preceding article.

ART. 3. *Be it further ordained*, That the coupon of said consolidated bonds falling due the first of January, 1880, be and the same is hereby remitted, and any interest taxes collected to meet said coupon are hereby transferred to defray the expenses of the State government.

Be it further ordained, and it is hereby ordained by this Constitutional Convention, That the foregoing provisions and articles relative to the consolidated debt shall not form a part of this constitution, except as hereinafter provided, as follows:

At the election held for the ratification or rejection of this constitution, it shall be lawful for each voter to have written or printed on his ballot the words, "For ordinance relative to State debt," or the words, "Against ordinance relative to State debt," and in the event that a majority of the ballots so cast have indorsed on them the words "For ordinance relative to State debt," then the said foregoing provisions and articles of this ordinance shall form a part of the constitution submitted if the same is ratified: and if a majority of the votes so cast shall have indorsed on them the words, "Against ordinance relative to State debt," then said provisions and articles shall form no part of this constitution.

ACT TO CARRY INTO EFFECT DEBT ORDINANCE.

ACT 121 OF 1880.

To provide for the stamping or exchange of the consolidated bonds of the State of Louisiana, in accordance with the ordinance relative to the State debt.

SECTION 1. *Be it enacted by the General Assembly of the State of Louisiana*, That the Governor of the State of Louisiana shall appoint one agent of the State of Louisiana in each of the cities of New York and London, who shall be known and designated as the "Bond Agent of

the State of Louisiana," who shall hold his agency until the first day of July, 1882, and shall receive an annual compensation of one thousand dollars, payable monthly on the warrant of the Auditor upon the State Treasurer, and either of said agents may be an individual or a firm, bank, or other corporation.

SEC. 2. *Be it further enacted, etc.*, That the Governor shall cause to be made three stamps, all bearing his signature, and bearing respectively the signature of the Treasurer or one of said bond agents, and having thereon the following words, to-wit: "Interest reduced to two per cent. per annum for five years, from January the first, 1880; three per cent. per annum for fifteen years, and four per cent. per annum thereafter;" and he shall deliver one of said stamps to each of said "bond agents," and one to the State Treasurer.

SEC. 3. *Be it further enacted, etc.*, That the Governor shall cause to be engraved and printed a sufficient number of new bonds of the denomination of five dollars, one hundred dollars, five hundred dollars, and one thousand dollars, each denomination to constitute a separate series, lettered, respectively, A, B, C and D, and each series numbered consecutively, beginning with one, bearing four per cent. per annum interest, from January first, A. D. eighteen hundred and eighty, and having attached thereto interest coupons; each of said coupons on each of said bonds shall be for six months' interest on the amount of the bond to which it is attached; and one coupon on each of said bonds shall be payable on the first day of July and on the first day of January of each year from the first day of July, 1880, to the first day of January, 1914, both inclusive. The principal of said bonds shall fall due on the first day of January, A. D. 1914. Said new issues of bonds shall be signed by the Governor and State Treasurer, shall be payable to bearer, and shall bear the date of the approval of this act, and they shall be designated as the "Constitutional bonds of the State of Louisiana."

SEC. 4. *Be it further enacted, etc.*, That the Governor shall cause said bonds to be delivered to the State Treasurer, through the Auditor, to exchange for the consolidated bonds of the State of Louisiana, when surrendered by the

holders thereof, and the Auditor shall charge the Treasurer with the said new bonds so delivered to him.

SEC. 5. *Be it further enacted, etc.*, That if the holder of any consolidated bond or bonds of the State of Louisiana applies to the State Treasurer for exchange of bonds and surrenders his consolidated bonds to the State Treasurer, with the interest coupons thereon, or which had been attached thereto, which fell due January 1, 1880, and all coupons falling due subsequently, the State Treasurer shall issue to said holder said new bonds, in such denominations as he may request, at the rate of seventy-five cents of the new bonds for each dollar of the principal of said consolidated bonds surrendered to the Treasurer. And the Treasurer, before delivering said new bond or bonds, shall designate in a blank, to be kept for that purpose, on the face thereof, the number of the old consolidated bond or bonds for which said new bond or bonds were given in exchange.

SEC. 6. *Be it further enacted, etc.*, That any holder of said consolidated bond or bonds may, at any time, present his bond or bonds to the State Treasurer or to either of said bond agents, and the said Treasurer or the said agent to whom presented, as the case may be, shall stamp each consolidated bond with the stamp furnished him by the Governor, after first detaching from said bond the coupon which fell due on the first day of January, 1880. No bond shall be stamped until the said January coupon shall have been surrendered to the Treasurer or agent.

SEC. 7. *Be it further enacted, etc.*, That the State Treasurer and each of said bond agents shall make to the Auditor of Public Accounts a report, at the end of each quarter, showing the numbers and denominations of all the consolidated bonds stamped as aforesaid, and the names and residences of the persons presenting same to be stamped, and with said report shall forward to the Auditor the said January coupons surrendered to them as aforesaid, duly canceled by them. The State Treasurer, at the end of each quarter, shall also make a report to the Auditor, showing the numbers and denominations of all consolidated bonds exchanged, and the numbers and denominations of all the new bonds issued in exchange

therefor, the names and residences of the persons to whom issued, which said report shall be accompanied by the consolidated bonds and coupons surrendered to the Treasury in exchange for the new bonds as aforesaid, which shall constitute his vouchers for the new bonds issued by him. The Auditor shall give his receipt to the Treasurer and the bond agents for all the old bonds and coupons received from them respectively, and shall retain the same in his possession until destroyed, as hereinafter provided.

SEC. 8. *Be it further enacted, etc.*, That the Governor shall furnish to the State Treasurer a large stamp having on it the words: "Canceled, by the issue of new bonds under the ordinance of the Constitution relative to the State debt." And the Treasurer shall stamp same upon each consolidated bond as soon as it is surrendered to him.

SEC. 9. *Be it further enacted, etc.*, That the Governor, the Lieutenant Governor and the Speaker of the House of Representatives, or any two of them, shall meet in the Auditor's office on Saturday next preceding the second Monday in May, 1882, and biennially thereafter, and shall then cause to be burnt all consolidated bonds and coupons which have been surrendered under this act. They shall draw a *proces verbal* of the same, giving the denominations and numbers of each bond burnt, and the same shall be laid before the General Assembly, accompanying the message of the Governor.

SEC. 10. *Be it further enacted, etc.*, That all parts of laws which conflict with or are contrary to this act are hereby repealed.

(Signed) R. N. OGDEN,
Speaker of the House of Representatives.

(Signed) S. D. McENERY,
Lieutenant Governor and President of the Senate.

Approved April 10, 1880.

(Signed) LOUIS A. WILTZ,
Governor of the State of Louisiana.

A true copy:
WILL. A. STRONG,
Secretary of State.

REPORT OF STATE TREASURER.

STATE OF LOUISIANA,
TREASURER'S OFFICE.
NEW ORLEANS, January 1, 1880.

To His Excellency Francis T. Nicholls, Governor of the State of Louisiana—SIR: In accordance with the requirements of law (Act No. 96, Extra Session, section 80 of 1877), I respectfully submit the following report of the financial operations of this department for the past fiscal year, commencing the 1st day of January, 1879, to the 31st day of December, 1879, inclusive, embracing its receipts, disbursements, etc., from the various funds, as provided by existing laws.

The treasurer's report consists of statements A, B, C, D and E.

Statement "A" shows an account of the receipts into the State treasury from all sources from the 1st day of January, 1879, to the 31st day of December, 1879, inclusive, amounting in the aggregate to two million three hundred and sixty-five thousand seven hundred and sixty-six dollars and twenty cents ($2,365,766.20), including the balance on hand on the 1st day of January, 1879, of one hundred and twenty-one thousand nine hundred and eleven dollars and forty cents ($121,911.40).

Statement "B" shows a detailed account of disbursements for the same period under each of the various legislative appropriations, amounting in the aggregate to two million one hundred and nineteen thousand seven hundred and thirty-three dollars and twelve cents ($2,119,733.12).

Statement "C" shows a detailed statement of the balances of each of the various funds of the State, by years, on hand on the morning of the 1st day of January, 1880, amounting in the aggregate to two hundred and forty-five thousand eight hundred and thirty-three dollars and eight cents ($245,833.08).

therefor, the names and residences of the persons to whom issued, which said report shall be accompanied by the consolidated bonds and coupons surrendered to the Treasury in exchange for the new bonds as aforesaid, which shall constitute his vouchers for the new bonds issued by him. The Auditor shall give his receipt to the Treasurer and the bond agents for all the old bonds and coupons received from them respectively, and shall retain the same in his possession until destroyed, as hereinafter provided.

SEC. 8. *Be it further enacted, etc.*, That the Governor shall furnish to the State Treasurer a large stamp having on it the words: "Canceled, by the issue of new bonds under the ordinance of the Constitution relative to the State debt." And the Treasurer shall stamp same upon each consolidated bond as soon as it is surrendered to him.

SEC. 9. *Be it further enacted, etc.*, That the Governor, the Lieutenant Governor and the Speaker of the House of Representatives, or any two of them, shall meet in the Auditor's office on Saturday next preceding the second Monday in May, 1882, and biennially thereafter, and shall then cause to be burnt all consolidated bonds and coupons which have been surrendered under this act. They shall draw a *proces verbal* of the same, giving the denominations and numbers of each bond burnt, and the same shall be laid before the General Assembly, accompanying the message of the Governor.

SEC. 10. *Be it further enacted, etc.*, That all parts of laws which conflict with or are contrary to this act are hereby repealed.

(Signed) R. N. OGDEN,
Speaker of the House of Representatives.

(Signed) S. D. McENERY,
Lieutenant Governor and President of the Senate.

Approved April 10, 1880.

(Signed) LOUIS A. WILTZ,
Governor of the State of Louisiana.

A true copy:
WILL. A. STRONG,
Secretary of State.

REPORT OF STATE TREASURER.

STATE OF LOUISIANA,
TREASURER'S OFFICE,
NEW ORLEANS, January 1, 1880.

To His Excellency Francis T. Nicholls, Governor of the State of Louisiana—SIR: In accordance with the requirements of law (Act No. 96, Extra Session, section 80 of 1877), I respectfully submit the following report of the financial operations of this department for the past fiscal year, commencing the 1st day of January, 1879, to the 31st day of December, 1879, inclusive, embracing its receipts, disbursements, etc., from the various funds, as provided by existing laws.

The treasurer's report consists of statements A, B, C, D and E.

Statement "A" shows an account of the receipts into the State treasury from all sources from the 1st day of January, 1879, to the 31st day of December, 1879, inclusive, amounting in the aggregate to two million three hundred and sixty-five thousand seven hundred and sixty-six dollars and twenty cents ($2,365,766.20), including the balance on hand on the 1st day of January, 1879, of one hundred and twenty-one thousand nine hundred and eleven dollars and forty cents ($121,911.40).

Statement "B" shows a detailed account of disbursements for the same period under each of the various legislative appropriations, amounting in the aggregate to two million one hundred and nineteen thousand seven hundred and thirty-three dollars and twelve cents ($2,119,733.12).

Statement "C" shows a detailed statement of the balances of each of the various funds of the State, by years, on hand on the morning of the 1st day of January, 1880, amounting in the aggregate to two hundred and forty-five thousand eight hundred and thirty-three dollars and eight cents ($245,833.08).

Statement "D" is a tabular statement of the amount of interest received into the State treasury for the payment of the interest coupons on the consolidated State bonds issued under Act No. 3, of 1874, how disbursed, the balance cash on hand on morning of January 1, 1880, and the amount of outstanding and unpaid coupons by years, on the 1st of January, 1880, inclusive.

Statement "E" shows a detailed statement of the bonds held by the State treasurer in trust for the Mechanical and Agricultural College, and the bonds belonging to the Louisiana State University; also, of the bonds returned by A Luria, cashier Louisiana National Bank, on June 7, 1878, in exchange of warrant No. 2,222, as per judgment of the Third District court of New Orleans, No. 25, 115, and of the Supreme Court of Louisiana, No. 7, 149, and pledge of the lessees of the Louisiana State Penitentiary, etc., etc.

The residue of the report is a compilation of the monthly reports of the banks, banking institutions, saving banks, etc., published in accordance with the provisions of Act No. 91, section 6, of 1877.

All of which is respectfully submitted.

E. A. BURKE, *State Treasurer.*

STATEMENT E.

Mechanical and Agricultural College.

196 bonds of $1000 each issued by the State of Louisiana under Act No. 3, of 1879, Nos. 710 to 905 inclusive	$196,000
2 bonds of $500 each issued by the State of Louisiana under Act No. 3, of 1879, Nos. 42 and 43.....	200
	$196,200

Louisiana State University or Seminary Fund.

164 bonds of $500 each issued by the State of Louisiana under Act No. 3, of 1879, No. 1902 to 2065 inclusive	$82,000
2 bonds of $500 each issued by the State of Louisiana under Act No. 3, of 1879, Nos. 4184 and 4185	200
1 bond of $1000 Consolidated Debt, City of New Orleans, dated July 1, 1852, No. 492	$1,000
	$83,200

Bonds Returned by A. Luria, Cashier Louisiana National Bank.

29 bonds of $1000 each issued by the State of Louisiana under Act No. 182, of 1857, and known as the Free School Bonds, and sold at auction in accordance with Act No. 82, of 1872, Nos. 45, 46, 47, 242, 246 to 260 inclusive, 403 to 408 inclusive, 514 to 528 inclusive	$29,000

Pledges of the Lessees of the Louisiana State Penitentiary.

Promissory Note and Certificate and Transfer for the sum of Forty-four Thousand Eight Hundred and Thirty-three dollars, amount due by the lessees of the Louisiana State Penitentiary for said lease up to and including the year 1878, as per Act No. 6, ex. session, 1878, approved March 26, 1878, said note dated December 11, 1878, and due December 11, 1880, bearing interest at the rate of 8 per ct. per annum	$44,833

Bonds Deposited by the Louisiana Equitable Life Ins. Co.

10 bonds of $1000 each issued by the State of Louisiana under Act No. 3, of 1874, Nos. 1598, 1947, 2043, 2458, 2691, 3615, 5472, 7828, 7830, 7172	$10,000
1 bond of $500 issued by the State of Louisiana under Act No. 3, of 1874, No. 1596	500
	$10,500

LETTER OF STATE TREASURER TO NEW YORK STOCK EXCHANGE.

BATON ROUGE, LA., MARCH 11, 1889.

George W. Ely, Esq., Secretary New York Stock Exchange, New York, N. Y.

DEAR SIR: Louisiana Consolidated Bonds have been issued of the following denominations and numbers:

$1,000 bonds Nos. 1 to 10,000.

$500 bonds Nos. 1 to 3,305.

$100 bonds Nos. 1 to 4,571 and 4,573 to 4,581.

No. 4,572 has not yet been issued.

The present bonded debt of the State consists of issue of Consolidated bonds....	$12,110,500.00
Less retired in exchange for Constitutional bonds.....	$290,200.00
	$11,820,300.00
Constitutional bonds.....	$217,650.00
Bonded debt.....	$12,037,950.00

The difference between these figures and those you quote consists in par certificates issued for fractional parts of bondable obligations and a certain obligation of the State which *may* be converted into bonds at some future period.

Yours truly,

(Signed) W. H. PIPES,

Treasurer State of Louisiana.

IN THE SUPREME COURT OF THE UNITED STATES.

No. 14,766.

VICTOR MEYER AND ADOLPH MEYER,

PLAINTIFFS IN ERROR,

versus

WALTER T. RICHARDS.

In Error to the Circuit Court of the United States for the Eastern District of Louisiana.

APPLICATION FOR A REHEARING ON BEHALF OF PLAINTIFFS IN ERROR.

E. H. FARRAR,
B. F. JONAS,
E. B. KRUTTSCHNITT,
For Plaintiffs in Error.

GRAHAM & SON, 99, 101, 103 GRAVIER ST., N. O.

IN THE SUPREME COURT OF THE UNITED STATES.

No. 14,766.

VICTOR MEYER AND ADOLPH MEYER,

PLAINTIFFS IN ERROR,

versus

WALTER T. RICHARDS.

In Error to the Circuit Court of the United States for the Eastern District of Louisiana.

APPLICATION FOR A REHEARING ON BEHALF OF PLAINTIFFS IN ERROR.

To the Honorable the Judges of the Supreme Court of the United States:

The plaintiffs in error earnestly and respectfully make application for a rehearing in this case, on the following grounds, which it would seem to them furnish a strong reason for departure from the usual rule of this court.

This case was decided by the learned Judge of the Circuit Court, without the aid of argument or brief, and, as

he himself says, after very hurried consideration. He was on the eve of departure, and decided the case at the request of counsel. (Opinion, Record, p. 15.)

The judgment was affirmed by your Honorable Court, by a divided vote, the late Justice Bradley being absent, in his last sickness.

Since the rendition of this judgment, to wit, on the 18th day of January, 1892, the Supreme Court of Louisiana (which is the highest court of appellate jurisdiction in this State) has finally decided a case involving precisely the same facts and issues at law as are here involved, in an opinion directly opposite to that of the Judge of the Circuit Court in this case.

We file herewith copies of the opinion of the court, together with the concurring and dissenting opinions in the case, which is that of Mrs. Sallie C. Pugh vs. Moore, Hyams & Co., No. 10,870 of the docket of that court.

An application for a rehearing was made (as is the usual practice in our Supreme Court), and was supported by an exhaustive brief, but after delay and consideration, it was denied, and the doctrine laid down, in the opinion of the Supreme Court, is now the established law governing and controlling the courts of our State.

Thus the unfortunate anomaly is presented of an entirely different rule of law prevailing in a given state of case, between the State courts and the courts of the United States, and the litigants who may be enabled to bring their suits in the State jurisdiction will thus be able to obtain relief which is denied to others in the Federal courts.

It is to be presumed that Judge Pardee will adhere to his position, supported as it is by the action of this court,

and that his opinion will be the law of the Court of Appeals.

This will be a great hardship upon your petitioners, and all others with the same cause of action, who may either be compelled to sue in the United States courts, or may have their causes removed from the State courts to that jurisdiction.

We, therefore, respectfully ask your Honorable Court to grant a rehearing in this case, and to order that it may be reargued, either orally or by brief, before a full bench at the next term of your Honorable Court, in order not only that the rights of petitioners may be passed upon by this tribunal, but in order that conflicts of jurisdiction and law may be avoided by a final decision of questions involving over a quarter of million of dollars in amount, and important constitutional and legal points which should be finally settled.

Very respectfully submitted,

E. H. FARRAR,
B. F. JONAS,
E. B. KRUTTSCHNITT,
For Plaintiffs in Error.